



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 438

Pretoria, 13 December 2001
Desember

No. 22948



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

CONTENTS

No.		Page No.	Gazette No.
-----	--	-------------	----------------

GOVERNMENT NOTICE**South African Reserve Bank***Government Notice*

1375	Banks Act (94/1990): Designation of an activity not falling within the meaning of "the business of a bank" (securitisation schemes)	3	22948
------	---	---	-------

GOVERNMENT NOTICE

SOUTH AFRICAN RESERVE BANK

No. 1375

13 December 2001

BANKS ACT, 1990

DESIGNATION OF AN ACTIVITY NOT FALLING WITHIN THE MEANING OF "THE BUSINESS OF A BANK" (SECURITISATION SCHEMES)

Under paragraph (cc) of the definition of "the business of a bank" in section 1 of the Banks Act, 1990 (Act No. 94 of 1990), I, Christo Floris Wiese, Registrar of Banks, hereby designate, with the approval of the Minister Finance, the activity set out in paragraph 2 of the Schedule, and which is performed in accordance with the conditions set out in paragraphs 3 to 13 of the Schedule, as an activity that does not fall within the meaning of "the business of a bank".

C F WIESE,

Registrar of Banks.

SCHEDULE

1. In this Schedule, "**the Act**" means the Banks Act, 1990 (Act No. 94 of 1990), and any word or expression to which a meaning has been assigned in the Act shall bear such meaning and, unless the context otherwise dictates –

"**associate**" means an associate as defined in Accounting Statement AC. 110 issued by the South African Institute of Chartered Accountants;

"**associated company**", in relation to an institution other than a bank or an institution within a banking group that transfers assets to a special-purpose institution in terms of a securitisation scheme, means a subsidiary or fellow subsidiary of that institution and includes an associate of that institution;

“commercial paper” means-

- (a) any written acknowledgement of debt, irrespective of whether the maturity thereof is fixed or based on a notice period, and irrespective of whether the rate at which interest is payable in respect of the debt in question is a fixed or a floating rate;
- (b) debentures or any interest-bearing written acknowledgement of debt issued for a fixed term in accordance with the provisions of the Companies Act; or
- (c) preference shares;

but does not include bankers' acceptances;

“Commercial Paper Notice” means Government Notice No. 2172, published in *Government Gazette* No. 16167 on 14 December 1994;

“Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973);

“credit-enhancement facility” means any facility or arrangement in terms of which the provider of such a facility or obligor under the arrangement is obliged to absorb losses associated with the pool of assets transferred in terms of a securitisation scheme, including both first-loss credit-enhancement facilities and second-loss credit-enhancement facilities;

“credit rating” means a domestic rating assigned by a credit-rating agency to commercial paper issued in respect of a securitisation scheme;

“credit-rating agency” means a credit-rating agency approved by the Registrar in his or her sole discretion;

“delayed payment on asset” means a delayed payment on assets that does not result directly or indirectly from a default or potential default in respect of the underlying transactions but results from, *inter alia*, administrative or

technical difficulties experienced in respect of the collection of payments in respect of the underlying assets;

"disclosure document" means the provision of certain information to prospective investors in a securitisation scheme about the securitisation scheme published in the form of a—

- (a) prospectus;
- (b) placing document;
- (c) offering circular; or
- (d) any other document with similar import;

"domestic rating" means a local-currency domestic rating that is tiered against an assumed best possible rating, which is usually that of the national Government, and which rating does not incorporate the sovereign risks of South Africa and which gives an indication of the relative risks only within South Africa and is not comparable across different countries;

"equity share capital" means equity share capital as defined in section 1 of the Companies Act;

"Financial Services Board" means the board established by section 2 of the Financial Services Board Act;

"Financial Services Board Act" means the Financial Services Board Act, 1990 (Act No. 97 of 1990);

"first-loss credit-enhancement facility" means a credit-enhancement facility that represents the first level of credit enhancement to parties involved in a securitisation scheme;

"insolvency-remote" means, in respect of a special-purpose institution, that the assets of such a special-purpose institution shall not be subject to any claim of the institution transferring such assets to the special purpose institution in terms of a securitisation scheme, whether as a result of such transferring institution's insolvency or otherwise;

“institution” includes a bank or any other institution within a banking group;

“institutions within a banking group” means the following institutions that may form part of a banking group:

- (a) All banks in such group;
- (b) all subsidiaries, joint ventures, or associates of such banks;
- (c) the controlling company of such banks;
- (d) all other subsidiaries, joint ventures and associates of such bank controlling company; and
- (e) any other entity that the Registrar may in writing determine;

“liquidity facility” means a facility provided in respect of a securitisation scheme in order to cover deficiencies in cash flows within the securitisation scheme, resulting from, *inter alia*, time differences in the payment of interest and principal on the assets transferred in terms of a securitisation scheme, or market disruptions, and which facility does not constitute a credit-enhancement facility;

“national Government securities” means all loan stock issued by the national Government or instruments guaranteed by the national Government;

“originator” means an institution that, whether at the commencement or during the life of the securitisation scheme, transfers assets from its own balance sheet, which assets are assets other than national Government securities or qualifying items, in terms of a securitisation scheme: Provided that if assets other than national Government securities or qualifying items constitute 10 per cent or less of the total assets transferred by an institution in terms of a securitisation scheme, such an institution shall for purposes of this Schedule be regarded as-

- (a) a repackager; or
- (b) if such institution also acts as a sponsor in respect of the same securitisation scheme, as a sponsor;

"parties involved in a securitisation scheme" means a special-purpose institution, parties acting in primary roles and parties acting in secondary roles: Provided that parties acting in secondary roles shall exclude providers of credit enhancement facilities;

"preference shares" means, when issued by a special-purpose institution that is a company, such preference shares not forming part of the equity share capital of the special-purpose institution;

"primary role" means the participation, by an institution, in a securitisation scheme as an originator, remote originator, sponsor or repackager;

"qualifying items" means all loan stock listed on the Bond Exchange of South Africa, or any other loan stock listed on a financial exchange approved by the Financial Services Board;

"Registrar" means the Registrar of Banks designated in terms of section 4 of the Act;

"remote originator" means an institution that, whether directly or indirectly, lends money to a special-purpose institution in order for the special-purpose institution to provide credit, other than customary credit, to a borrower;

"repackager" means an institution that whether at the commencement or during the life of the securitisation scheme, acquires and subsequently transfers the assets, consisting of national Government securities or qualifying items, of third parties via its balance sheet in terms of a securitisation scheme: Provided that an institution that whether at the commencement or during the life of the securitisation scheme, acquires and subsequently transfers the assets, consisting of assets other than national Government securities or qualifying items, of third parties via its balance sheet in terms of a securitisation scheme, shall for purposes of this Schedule be regarded as an originator;

“revolving assets” means loan facilities or other underlying transactions in terms of which debtors under such underlying transactions are permitted to vary, within an agreed limit, the amount utilised in terms of the underlying transaction, or to repay amounts in terms of the underlying transactions at their own discretion, subject, in certain circumstances, to a minimum amount per payment period or in accordance with a fixed repayment schedule;

“secondary role” means the participation by an institution in a securitisation scheme, as a provider of a credit-enhancement facility, a provider of a liquidity facility, an underwriter, a purchaser of senior commercial paper, a servicing agent or a counterparty to a transaction included in the trading book of a bank;

“second-loss credit-enhancement facility” means a credit-enhancement facility that represents the second and further levels of credit-enhancement to parties involved in a securitisation scheme: Provided that –

- (a) such facility benefits from a substantial first-loss credit-enhancement facility, that is, when the first-loss credit-enhancement facility covers some multiple, as opposed to a fraction, of historical losses or worst-case losses estimated by way of simulation or other technique;
- (b) such facility may be drawn only after the first-loss credit-enhancement facility has been exhausted;

and when there has not been compliance with the above conditions, the facility concerned shall for purposes of calculating a bank's prescribed capital requirement be regarded as a first-loss credit-enhancement facility for purposes of this Schedule;

“securitisation scheme” means a scheme whereby a special-purpose institution issues commercial paper and where the payments by the special-purpose institution in respect of the commercial paper so issued are made from the cash flows arising from or proceeds derived from the assets,

consisting of claims sounding in money, transferred to such special-purpose institution by an originator, a remote originator or repackager;

“servicing agent” means an institution that acts as servicing agent in respect of the assets transferred to a special-purpose institution in terms of a securitisation scheme;

“senior commercial paper” means commercial paper issued in terms of a securitisation scheme, the purchase of which commercial paper does not constitute providing a first-loss or second-loss credit-enhancement facility;

“short-term liquidity facility” means a liquidity facility provided in respect of a securitisation scheme for a period of less than one year;

“special-purpose institution” means a company incorporated or a trust created, insolvency-remote from the institution transferring the assets in terms of a securitisation scheme, and solely for the purpose of the implementation and operation of a securitisation scheme;

“sponsor” means an institution that facilitates, in the capacity of arranger of structuror, the transfer whether at the commencement or during the life of the securitisation scheme of assets indirectly, that is, not from the institution's balance sheet, to a special-purpose institution in terms of a securitisation scheme;

“trading book of a bank” includes-

- (a) proprietary positions in financial instruments that are held for resale or that are taken by the bank with the intention of benefiting, in the short term, from actual or expected differences between the buying and selling prices of the financial instruments, or from other price or interest-rate variations, or positions in financial instruments arising from matched principal broking, or positions taken in order to hedge other elements of the trading book;

- (b) exposures that are due to unsettled transactions, free deliveries and over-the-counter derivative instruments, including exposure resulting from-
- (i) repurchase agreements and securities-lending transactions based on securities included in the trading book, as contemplated in paragraph (a);
 - (ii) resale agreements and securities-borrowing transactions;

and subject to at least the following conditions-

- (iii) exposures are marked to market on a daily basis;
 - (iv) collateral is adjusted in order to take account of material changes in the value of the underlying securities involved in the agreement or transactions in question; and
 - (v) an agreement exists allowing the claims of the bank to be offset automatically and immediately against the claims of its counterparty in the event of default;
- (c) exposures, in the form of fees, commission, interest, dividends and margin on exchange-traded derivatives, that are directly related to the items included in paragraph (a) or (b) above;

but does not include a transaction provided for elsewhere in this Schedule;

“transfer” means the sale and transfer of assets in terms of a securitisation scheme, or another method of transfer authorised by the Registrar in writing and subject to such conditions or exemptions from this Schedule as the Registrar may determine in such written authorisation;

“underlying transaction” means the transaction in which an asset transferred by an institution in terms of a securitisation scheme had its origin;

“underwriting” means exposure that include all underwriting commitments, whether in writing or verbally, including all note-issuance facilities and revolving underwriting facilities in respect of which the contingent risk arises from the bank’s role as underwriter of such issues, guaranteeing to provide funds when other parties have refused to do so;

2. Under paragraph (cc) of the definition of “the business of a bank” in section 1 of the Act , the Registrar, hereby designate, with the approval of the Minister Finance, the acceptance, by a special-purpose institution, of money from the general public against the issue, by such a special-purpose institution, of commercial paper in respect of a securitisation scheme, as an activity that does not fall within the meaning of “the business of a bank”:
Provided that -

- (a) when an institution within a banking group acts in a primary role or secondary or both a primary and a secondary role in respect of the securitisation scheme, there shall be compliance by such an institution within a banking group with the relevant conditions set out in paragraphs 3 to 13 of this Schedule;
- (b) when an institution other than an institution within a banking group acts in a primary or secondary role or both a primary and a secondary role in respect of the securitisation scheme, there shall be compliance with the relevant conditions set out in paragraphs 3, 11, 12 and 13 of this Schedule;
- (c) no transactions other than transactions directly relating to the securitisation scheme shall be entered into by, or on behalf of, the special-purpose institution.

3. Conditions relating to limiting of association with assets

(a) The transfer of assets to a special-purpose institution shall totally divest the transferring institution and all its associated companies and, when the transferring institution is a bank, divest any other institution within the banking group of which such a bank is a member, of all rights and obligations originating from the underlying transactions and all risks in connection with the assets transferred: Provided that, the transferring institution may, in terms of a separate transaction, act in a secondary role, and when such transferring institution is a bank, act in such a secondary role subject to the provisions of this Schedule.

(b) Subject to the provisions of sub-paragraph (a), the special-purpose institution shall have no right of recourse against an institution acting in a primary role or any of its associated companies or, when such an institution is a bank, against any other institution within the banking group of which such a bank is a member, in respect of losses incurred in connection with any of the assets after the transfer thereof in terms of the securitisation scheme.

(c) Subparagraph (b) shall not apply when the special-purpose institution has a right of recourse against an institution acting in a primary role or any of its associated companies or, when such an institution is a bank, against any other institution within the banking group of which such a bank is a member, in respect of losses incurred in connection with any of the assets after the transfer thereof in terms of the securitisation scheme, and such right of recourse emanates from warranties given by such institution in respect of assets so transferred: Provided that-

(i) the warranties do not relate to the future credit-worthiness of the borrower in terms of the assets transferred; and

- (ii) the warranties do not relate to matters that do not fall within the control of the institution providing the warranties.
- (d) An asset may not be transferred if the transfer will result in a breach of any terms of the relevant underlying transaction.
- (e) The agreement between the institution transferring assets in terms of a securitisation scheme and the special-purpose institution shall be such that, in the event of the terms of an underlying transaction being amended, the special-purpose institution, and not the transferring institution, or any of the transferring institution's associated companies, or, when such a transferring institution is a bank, any other institution within the banking group of which such a bank is a member, will be subject to the terms so amended.
- (f) A bank, or another institution within a banking group of which such a bank is a member, acting in a primary role may replace, at its own discretion, any asset transferred in terms of a securitisation scheme, excluding a non-performing asset, with an asset of equivalent credit quality.
- (g) A bank, or another institution within a banking group of which such a bank is a member, acting in a primary role may repurchase assets from a special-purpose institution only when such repurchase is conducted in compliance with the following conditions:
 - (i) The repurchase of assets is conducted on market-related terms and conditions;

- (ii) such a bank or other institution within a banking group of which such a bank is a member has no prior obligation to repurchase assets from the special-purpose institution;
 - (iii) when the institution acting in a primary role is a bank, the total value of assets repurchased in terms of this subparagraph from a special-purpose institution (other than in the bank's normal course of trading in Government securities and qualifying items), and held on the books of the bank at any point in time, does not exceed 10 per cent of the maximum value of the pool of assets held by the special-purpose institution: Provided, however, that the Registrar may in his or her discretion allow a bank to repurchase assets in excess of this limitation;
 - (iv) a bank or another institution within a banking group of which such a bank is a member may repurchase non-performing assets only if such a bank or other institution's external auditors have certified that the assets are being acquired at fair market value, which value reflects the non-performing status of the asset; and
 - (v) to the extent that such repurchase of assets amounts to such a bank or another institution within a banking group of which such a bank is a member providing a liquidity facility, the provision in this Schedule relating to liquidity facilities shall apply in addition to the provisions of this subparagraph (f).
- (h) After a securitisation scheme has been perfected, the transfer, by a bank acting in a primary role, of further assets in terms of that scheme shall be permissible only for purposes of

maintaining the capital value of the portfolio of assets included in the scheme: Provided that-

- (i) such a transfer of further assets may not amount to the provision of a credit-enhancement facility; and
 - (ii) the Registrar may in his or her discretion allow such a bank to transfer further assets in excess of this limitation.
- (j) An institution acting in a primary role, by itself, or together with its associated companies, and when such an institution is a bank, such bank by itself or together with any institution or institutions within a banking group of which such a bank is a member, may not-
- (i) in the case of a special-purpose institution that is a company, acquire or hold any equity share capital in such a special-purpose institution of which the nominal value represents more than 50 per cent of the nominal value of all the issued equity share capital in the special purpose institution, unless, due to limitations on the voting rights attached to the equity share capital so held-
 - (aa) such institution voting on its own or such institution and its associated companies voting as a group; and
 - (bb) when such institution is a bank, such bank voting on its own or such bank and any institution or institutions within a banking group of which such a bank is a member;

is or are unable to decisively influence the outcome of the voting at the general meeting of the special purpose institution.

- (ii) in the case of a special purpose institution that is a trust, directly or indirectly, acquire or hold any beneficial interest in or be a beneficiary of such a special-purpose institution of which the value represents more than 50 per cent of the interest (beneficial or otherwise) in the property forming the subject matter of the special purpose institution, unless, due to limitations on the voting rights attached to the interest (beneficial or otherwise) so held-
 - (aa) such institution voting on its own or such institution and its associated companies voting as a group; and
 - (bb) when such institution is a bank, such bank voting on its own or such bank and any institution or institutions within a banking group of which such a bank is a member;

is or are unable to decisively influence the outcome of the voting at the general meeting of the special purpose institution.

- (k) The board of directors or body of trustees, as the case may be, of a special-purpose institution shall be independent of the institution acting in a primary role and, whenever such an institution is a bank, of any other institution within a banking group of which such a bank is a member: Provided that an institution acting in a primary role may –

- (i) In the case of a company appoint one director to its board of directors, which board of directors shall consist of not less than three members; or
 - (ii) in the case of a trust appoint one trustee to its body of trustees, which body of trustees shall consist of not less than three members.
- (l) The name of the special-purpose institution shall not include the name of the bank acting in a primary role, or imply any association with such a bank.

4. Conditions relating to credit-enhancement facilities

- (a) A bank or another institution within a banking group of which such a bank is a member may provide, notwithstanding the fact that such a bank or other institution is also acting in a primary role, a credit-enhancement facility in respect of a securitisation scheme: Provided that-
- (i) there is no recourse to the bank or such other institution within a banking group beyond the fixed contractual obligations provided for in the facility;
 - (ii) subject to reasonable qualifying conditions, parties involved in a securitisation scheme or a person acting on behalf of these parties has the unequivocal right to select an alternative party to provide a credit-enhancement facility;
 - (iii) the credit-enhancement facility is documented in a manner that clearly distinguishes such a facility from any other facility provided in respect of the securitisation

scheme by the bank or such other institution within the banking group concerned;

- (iv) the details of the credit-enhancement facility are disclosed in the disclosure document issued in respect of the securitisation scheme.
- (b) A first-loss credit-enhancement facility shall for purposes of the calculation of a bank's prescribed capital requirement be treated as an impairment of the bank's primary capital.
- (c) A second-loss credit-enhancement facility shall for purposes of the calculation of a bank's prescribed capital requirement be treated as a direct credit substitute, the face amount of the facility attracting a credit-conversion factor of 100 per cent and a risk-weighting of 100 per cent.
- (d) The amount of capital held by a bank in terms of subparagraphs (b) and (c) above shall be limited to the amount of capital that the bank would have been required to hold in respect of all the assets transferred had it not been for the securitisation scheme.
- (e) A bank may provide a first-loss credit-enhancement facility, together with a second-loss credit-enhancement facility: Provided that –
 - (i) the first- and second-loss credit-enhancement facilities are separately documented;
 - (ii) the bank can demonstrate that the separate first-loss credit-enhancement facility provides substantial protection to a second-loss credit-enhancement facility.

and in the case of a failure to comply with the above conditions the first-loss credit-enhancement facility shall, together with the second-loss credit-enhancement facility, be treated as a first-loss credit-enhancement facility for capital-adequacy purposes.

(f) A bank, or another institution within a banking group of which such a bank is a member, acting in a primary role, may provide credit enhancements in terms of the provisions of this paragraph 4 only to the extent that the provision of such facility have been determined at the commencement of the securitisation scheme: Provided that the Registrar may in his or her discretion allow a bank or such other institution to alter such determination during the life of the securitisation scheme.

5. Conditions relating to liquidity facilities

(a) A bank, or another institution within a banking group of which such a bank is a member, acting in a primary role as a repackager or a sponsor, may provide a liquidity facility (other than a short-term liquidity facility) in respect of a securitisation scheme: Provided that-

(i) there is no recourse to the bank or such other institution within a banking group beyond the fixed contractual obligations provided for in the facility;

(ii) subject to reasonable qualifying conditions, parties involved in a securitisation scheme or a person acting on behalf of these parties has the unequivocal right to select an alternative party to provide a liquidity facility;

(iii) the liquidity facility is documented in a manner that clearly distinguishes such a facility from any other facility

provided in respect of the securitisation scheme by the bank or such other institution within the banking group concerned;

(iv) the liquidity facility may be reduced or terminated at the instance of the bank or such other institution within the banking group concerned should a specified event relating to a deterioration of asset quality occur;

(v) the liquidity facility either requires a reasonable asset-quality test to ensure that the utilisation of such a facility would not cover deteriorated or defaulted assets or contains a term requiring the termination or reduction of the facility in the event of a specified decline in asset quality;

(vi) the liquidity facility documentation clearly identifies and limits the conditions for utilisation and, in particular, states that the facility may not be utilised as a permanent revolving facility, in order to provide credit enhancement or cover losses sustained in respect of the securitisation scheme;

(vii) the utilisation of the liquidity facility is effected by the special-purpose institution, and not directly by the investors;

(viii) the debts resulting from the utilisation of the liquidity facility may not be subordinated to the interest of investors in the securitisation scheme: Provided, however, that the debts resulting from the utilisation of the liquidity facility may be subordinated to the debts resulting from the utilisation of other liquidity facilities whenever

multiple liquidity facilities are applied to a securitisation scheme;

(ix) payment of any fee or other dues in respect of the liquidity facility may not be further subordinated or, subject to deferral or waiver, beyond what is explicitly provided for in the order of priority set forth in those provisions of the securitisation scheme that regulate entitlement to payment;

(x) the salient features of the liquidity facility are disclosed in the disclosure document issued in respect of the securitisation scheme;

(xi) the disclosure document issued in respect of the securitisation scheme contains a clear and unequivocal statement that-

(aa) the obligations of the bank or such other institution within the banking group concerned in respect of a liquidity facility do not significantly extend beyond the salient features disclosed in accordance with item (x) above; and

(bb) the bank or other such other institution within the banking group concerned will not support the securitisation scheme beyond the obligations stipulated in subitem (aa) above.

(b) If a bank, or another institution within a banking group of which such a bank is a member, that acts as a servicing agent, repackager or sponsor in respect of a securitisation scheme and that provides a liquidity facility in respect of such a securitisation scheme, complies with the conditions set-out in subparagraph

- (a) above, the standard treatment of liquidity facilities prescribed in the Regulations relating to Banks will apply.
- (c) A bank, or another institution within a banking group of which such a bank is a member, acting in a primary role or as a servicing agent in respect of a securitisation scheme, may provide a short-term liquidity facility in respect of such a securitisation scheme, provided that there is compliance with the provisions of subparagraph (a) above.
- (d) If a bank that provides liquidity facilities in respect of a securitisation scheme does not comply with the conditions set out in this paragraph, the liquidity facility concerned shall be deemed, for purposes of this Schedule, to be a first-loss credit-enhancement facility on the balance sheet of the bank concerned.

6. Conditions relating to underwriting

- (a) A bank acting as an originator or a remote originator in respect of a securitisation scheme may act as underwriter in respect of such scheme: Provided that-
- (i) the assets securitised shall for purposes of calculating a banks prescribed capital requirement not be regarded as having been transferred from the bank's balance sheet until at least 80 per cent of the total debt raised by the special-purpose institution, other than debt that is regarded as credit-enhancement facilities in terms of this Schedule, has been issued to third parties;
- (ii) once the ~~assets~~ are for purposes of calculating a banks prescribed capital requirement regarded as having been

transferred from the bank's balance sheet in accordance with item (i) above, any securities held by such bank acting as an originator or remote originator in respect of the securitisation scheme in excess of 90 per cent of the total debt raised shall for purposes of calculating a banks prescribed capital requirement be regarded as a second-loss credit-enhancement facility for purposes of this Schedule.

(b) A bank acting as a sponsor or a repackager in respect of a securitisation scheme may act as underwriter in respect of such scheme: Provided that, at the end of the underwriting concession period, any holdings of -

(i) senior commercial paper to which a credit-rating agency has assigned a credit rating of worse than BBB or the equivalent thereof shall for purposes of calculating a banks prescribed capital requirement be regarded as a second-loss credit-enhancement facility for purposes of this Schedule;

(ii) senior commercial paper to which a credit-rating agency has assigned a credit rating of BBB or better or the equivalent thereof shall for purposes of calculating a banks prescribed capital requirement not be regarded as a second-loss credit-enhancement facility and shall be treated in accordance with paragraph 7 of this Schedule;

(iii) senior commercial paper to which a credit-rating agency has not assigned a credit rating shall for purposes of calculating a banks prescribed capital requirement be regarded as a second-loss credit-enhancement facility for purposes of this Schedule.

7. Conditions relating to the purchase of senior commercial paper

(a) Notwithstanding anything to the contrary contained in the Regulations relating to Banks, senior commercial paper to which a credit-rating agency has assigned a credit rating shall for purposes of calculating a banks prescribed capital requirement attract the following risk weightings when purchased by a bank, regardless of whether such a bank is also acting in a primary role:

- (i) senior commercial paper rated AAA to AA- or the equivalent thereof shall attract a risk weighting of 20 per cent;
- (ii) senior commercial paper rated A+ to A- or the equivalent thereof shall attract a risk weighting of 50 per cent;
- (iii) senior commercial paper rated BBB+ to BBB- or the equivalent thereof shall attract a risk weighting of 100 per cent;
- (iv) senior commercial paper rated BB+ to BB- or the equivalent thereof shall attract a risk weighting of 150 per cent;
- (v) senior commercial paper rated B+ or below, or the equivalent thereof, shall for purposes of calculating a banks prescribed capital requirement be regarded as a first-loss credit-enhancement facility for purposes of this Schedule.

(b) Senior commercial paper to which a credit-rating agency has not assigned a credit rating shall attract the risk weighting applicable

to the underlying asset securitised when purchased by a bank, regardless of whether such a bank is also acting in a primary role: Provided that, should the underlying asset securitised comprise assets that attract different risk weightings, the unrated commercial paper shall attract the risk weighting accorded to the assets with the highest risk weighting.

8. Conditions relating to servicing

- (a) A bank or another institution within a banking group may, notwithstanding the fact that a such bank or other institution is acting in a primary role, undertake the role of servicing agent in respect of a securitisation scheme: Provided that –
 - (i) a formal servicing agreement is in place, which agreement has to specify the services to be provided and the standard for the performance of these services;
 - (ii) a confirmation is included in the disclosure document that the servicing agent in its capacity as servicing agent is under no obligation to fund payments owed in respect of a securitisation scheme, absorb losses incurred in respect of the assets transferred to the special purpose institution concerned, or otherwise recompense investors for losses incurred in respect of a securitisation scheme;
 - (iii) the servicing agent may withdraw, at its own discretion and subject to a reasonable period of notice, from its commitments as servicing agent;
 - (iv) services are provided in accordance with market-related terms and conditions (including remuneration).

(b) If payments due in terms of an underlying transaction are made through the agency of a bank that acted in a primary role, or of any other institution within the banking group of which such a bank is a member, the bank or such other institution may not transfer any funds to the special-purpose institution in respect of such payments unless such payments have actually been received from the debtor in terms of the underlying transaction.

(c) (i) Subparagraph (b) shall not be construed as precluding the provision of a short-term advances by the servicing agent, at the sole discretion of the servicing agent, in order to cover an unexpected shortfall arising from delayed payments on assets.

(ii) Such short-term advances shall comply with the provisions of paragraph 5

(d) Payment of any fee or other dues in respect of the services of a bank or other institution within a banking group acting as a servicing agent may not be further subordinated, or be subject to deferral or waiver, beyond what is explicitly provided for in the order of priority set forth in those provisions of the securitisation scheme that regulate entitlement to payment.

9. Conditions relating to transactions included in the trading book of a bank

(a) A bank, including a bank acting in a primary role, may enter into transactions included in the trading book of a bank with a special-purpose institution: Provided that-

- (i) there is no recourse to the bank beyond the fixed contractual obligations provided for in the transaction included in the trading book of a bank;
 - (ii) there is no obligation on the bank to enter into further a transaction included in the trading book of a bank with the special-purpose institution;
 - (iii) the transactions included in the trading book of a bank are entered into in accordance with market-related terms and conditions;
 - (iv) the transactions included in the trading book of a bank do not involve the acquisition of commercial paper issued by the special-purpose institution, or assets, or a beneficial interest in assets, held by the special-purpose institution for purposes of a securitisation scheme, except as otherwise provided for in this Schedule.
- (b) If a bank that enters into transactions included in the trading book of a bank with a special-purpose institution in respect of a securitisation scheme complies with the conditions specified in subparagraphs (a) above, the provisions of the Regulations relating to Capital-adequacy Requirements ("CAR") for Banks' Trading Activities in Financial Instruments shall apply to such transactions.
- (c) If a bank that enters into a transaction included in the trading book of a bank with a special-purpose institution in respect of a securitisation scheme does not comply with the conditions specified in subparagraph (a) above, the transaction concerned shall be deemed, for purposes of this Schedule, to be a first-loss credit-enhancement facility.

10. Conditions relating to the securitisation of revolving assets

- (a) Subject to the provisions of subparagraph (b), a bank or another institution within a banking group of which such bank is a member, acting as an originator or a remote originator in respect of a securitisation scheme involving the ongoing transfer of revolving assets, shall apply a credit-conversion factor of 10 per cent and the risk-weighting attributable to the revolving assets concerned, to the notional amount of the revolving assets transferred to the special-purpose institution.
- (b) Notwithstanding the provisions of subparagraph (a), the Registrar may approve, subject to such conditions as he or she may determine a credit-conversion factor to be applied to the notional amount of the revolving assets transferred to the special-purpose institution.

11. Conditions relating to the issue of commercial paper

Notwithstanding anything to the contrary in the Commercial Paper Notice contained, a special-purpose institution may issue commercial paper for purposes of a securitisation scheme only subject to the following conditions:

- (a) Commercial paper may-
 - (i) be issued or transferred only in minimum denominations equal to or greater than an initial principal value of R1 million; unless the commercial paper is-
 - (aa) listed on a recognised financial exchange;
 - (bb) endorsed by a bank;

- (cc) issued for a period of longer than five years; or
 - (dd) backed by an explicit national Government guarantee;
- (ii) be issued only by a juristic person authorised by the Registrar, in writing, to issue commercial paper pursuant to a securitisation scheme in accordance with the provisions of this Schedule and subject to such other conditions as the Registrar may determine in such written authorisation.
- (b) A special-purpose institution issuing commercial paper pursuant to a securitisation scheme shall, in a placing document or disclosure document relating to such issue of commercial paper, disclose at least the following information:
- (i) The name of the special-purpose institution;
 - (ii) the name of the auditor of the special-purpose institution;
 - (iii) the total amount of commercial paper to be issued by the special-purpose institution;
 - (iv) all other information that may reasonably be necessary to enable the lender to ascertain the nature of the financial and commercial risk of his or her investment;
 - (v) whether or not the particular issue is listed;
 - (vi) a description of the assets, the cash flows arising from which or proceeds of which are utilised for the payments by the special-purpose institution in respect of the

commercial paper issued by the special purpose institution in respect of a securitisation scheme; and

(vii) confirmation by the auditor of the special-purpose institution that the issue of commercial paper pursuant to a securitisation scheme complies in all respects with the relevant provisions of this Schedule.

(c) (i) A disclosure document relating to the issue of commercial paper pursuant to a securitisation scheme shall-

(aa) in the case of the special-purpose institution being a company, be signed by two directors of such a company, authorised thereto; or

(bb) in the case of the special purpose institution being a trust, be signed by two senior officials of such a trust, authorised thereto.

(ii) When a placing document or disclosure document has been signed by the persons provided in item (i) above, such signatories shall be deemed to have authorised the issue of such a placing document or disclosure document.

(iii) Every signature to a placing document or disclosure document shall be dated, and the latest of such dates shall be deemed to be the date of the placing document or disclosure document.

(iv) In the disclosure document shall be disclosed at least the information prescribed in items (i) and (vii) of subparagraph (b) of this paragraph.

12. Conditions relating to disclosure

- (a) The board of directors or the trustee, as the case may be, of the special-purpose institution shall appoint an auditor who, in addition to his or her normal duties as auditor, shall be required-
 - (i) to satisfy himself or herself that, on the basis of the information presented to him or her by the special-purpose institution, there will be compliance with the relevant provisions of this Schedule with regard to the conduct of the securitisation scheme; and
 - (ii) if such an auditor has so satisfied himself or herself, to furnish a statement to that effect, which statement shall be included in the disclosure document that is to be issued with regard to the securitisation scheme.
- (b) The Registrar may prescribe additional disclosure requirements in respect of securitisation schemes.

13. Conditions relating to non-compliance

- (a) If, in the execution of a securitisation scheme, there is not compliance by a bank, acting as an originator, a remote originator or a repackager, with any of the conditions set out in this Schedule, the assets transferred in terms of that scheme by such an institution shall, for purposes of the calculation of such a bank's capital-adequacy requirement, be reflected as assets on the balance sheet of the bank concerned.
- (b) Chapter VIII of the Banks Act shall apply when a special-purpose institution effects a securitisation scheme that is not in compliance with this Schedule.

14. Repeal of laws

- (a) Government Notice No.153 published in *Government Gazette* No. 13723 on 3 January 1992 is hereby repealed in its entirety.
-

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Publications: Tel: (012) 334-4508, 334-4509, 334-4510
Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504
Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737
Cape Town Branch: Tel: (021) 465-7531

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001
Publikasies: Tel: (012) 334-4508, 334-4509, 334-4510
Advertensies: Tel: (012) 334-4673, 334-4674, 334-4504
Subskripsies: Tel: (012) 334-4735, 334-4736, 334-4737
Kaapstad-tak: Tel: (021) 465-7531