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## GENERAL NOTICES

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### NOTICE 2932 OF 2002

#### 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 Consumer Affairs Committee on the result of an investigation made by the Committee pursuant to General Notice 1905 of 2001 as published in Government Gazette No.22600 dated 22 August 2001, as set out in the Schedule.

**A ERWIN**

**MINISTER OF TRADE AND INDUSTRY**

#### SCHEDULE

# **CONSUMER AFFAIRS COMMITTEE**

## **REPORT IN TERMS OF SECTION 10(1) OF THE CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988 (ACT No. 71 OF 1988)**

**Report No 95**

**GOLD CHARITY FUND INVESTMENTS LTD**



## 1. The Consumer Affairs Committee

The Consumer Affairs (Unfair Business Practices) Act, 71 of 1988 (the Act), is administered by the Consumer Affairs Committee (the Committee), a statutory body in the Department of Trade and Industry. The purpose of the Act is to provide for the prohibition or control of unfair business practices. An unfair business practice is defined as any business practice which, directly or indirectly, has or is likely to have the effect of harming the relations between businesses and consumers, unreasonably prejudicing any consumer, deceiving any consumer or unfairly affecting any consumer.

The Act is enabling and not prescriptive. The main body of the Act is devoted to various administrative procedures to be followed, the investigative powers of its investigating officials, the types of investigations the Committee can undertake and the powers of the Minister. In the pursuance of its objective, the Act confers wide investigative powers on the Committee. It provides for two types of investigations into the business practices of individual entities or businesses, namely "informal" section 4(1)(c) investigations or "formal" section 8(1)(a) investigations.

The usual procedure when the Committee receives a complaint from a consumer, is to undertake a section 4(1)(c) investigation. This type of 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 unfair business practice which allegedly exists or may come into existence. Notices of section 4(1)(c) investigations are not published in the Government Gazette, whereas formal section 8(1)(a) investigations are. The Minister is not empowered to make any decisions about the discontinuance of a particular unfair business practice on the strength of a section 4(1)(c) investigation. He may do so in terms of a section 8(1)(a) investigation.

It is not required in the Act that a section 8(1)(a) investigation must be preceded by a section 4(1)(c) investigation. If the Committee is of the opinion that *prima facie* evidence of an unfair business practice exists, it usually dispenses with the section 4(1)(c) investigation.

Should the Committee, after a section 8(1)(a) investigation, find that an unfair business practice exists, it recommends corrective action by the Minister to ensure the discontinuance of the unfair business practice. The powers of the Minister are set out in section 12 of the Act.

When the Committee has decided to undertake a preliminary investigation in terms of section 4(1)(c), or has issued a notice in terms of section 8(4) in relation to an investigation in terms of section 8(1)(a), it may at any time thereafter, in terms of section 9 of the Act, negotiate with any person with a view to making an arrangement which in the opinion of the Committee will ensure the discontinuance of a unfair business practice which exists or may come into existence.

A subsequent order of the Minister will be applicable to the particular individual(s) or business entity(ies). The order of the Minister is published in the Government Gazette. An infringement of the Minister's order is a criminal offence, punishable by a fine of R200 000 or five years imprisonment or both the fine and the imprisonment.

## 2. Gold Charity Fund Investments Ltd comes to the attention of the Committee

Gold Charity Fund Investments Ltd (2001/000710/06) (Gold Charity) was incorporated on 16 January 2001. In a letter dated 12 February 2001 from Gold Charity to the Nelson Mandela Children's Fund the directors are indicated as CM Walker (Walker) and NF Lotterie (Lotterie). It appears that a number of other persons were appointed as directors, because in a letter dated 13 March 2001 from Gold Charity to "The Honourable" Dr Nelson Mandela the directors are indicated as Lotterie (chairman), Dr COM Setsubi, Tembi Mahlasela (director of foreign affairs), Walker (managing director), ZB Galo, MD Tylwa, T van Niekerk and CJJ Schmidt.

Towards the end of March 2001 an e-mail from a Gold Charity participant to an undisclosed recipient came to the attention of the Committee. The following are excerpts from this e-mail:

- The "... entrepreneurial, open minded, inquisitive one. The one that is always striving at making it better, of finding new ways, of re-inventing the old, at amassing wealth and freedom" was congratulated.
- The marketing plan (presumably of Gold Charity) "... has already been placed in front of the DTI some three months ago which they had okayed with a (sic) minor changes here and there ...". ***The Committee denies that the scheme had been approved because the Act does not provide for the approval of any scheme whatsoever. The statement about the purported involvement of the DTI was designed to mislead consumers and in fact DTI was unaware of Gold Charity until such time as it received the e-mail.***
- "They (Gold Charity) are currently in discussions with Mr Nelson Mandela to obtain the exclusive rights to mint a coin with his face on it".
- "The Nelson Mandela Children's Fund has been placed at the head of the Binary System ...".
- "The Genealogy has been outsourced to the University of Cape Town".
- "Standard Bank and VeriSign will be online this week which will allow us to include members from outside South Africa into our businesses using the online facilities of the company's web site".
- "The launch date is scheduled for somewhere around the end of March at the Cape Sun. ... The SABC has already okayed their presence that evening".

It appeared that Gold Charity was a pyramid promotional scheme<sup>(1)</sup> and the Committee notified Walker on 26 March 2001 that the following entities would be informed that it did not approve the marketing plan of Gold Charity and that it would consider undertaking a section 8(1)(a) investigation in terms of the Act into the business practices of Gold Charity at its meeting that was to be held on 5 April 2001.

- The office of Mr Nelson Mandela. On 28 March 2001 the spokesperson for the Nelson Mandela Foundation informed the Committee that it was not involved with Gold Charity.
- The Nelson Mandela Children's Fund. On 29 March 2001 the Chief Executive Officer of the Nelson Mandela Children's Fund informed the Committee that The Nelson Mandela Children's Fund did not wish to be associated in any way with Gold Charity.
- The University of Cape Town.
- Standard Bank.
- The SABC.
- The Direct Selling Association of South Africa.
- ABSA Bank

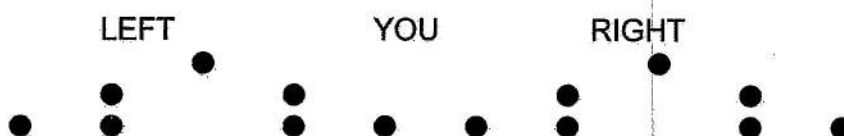
### 3. The Gold Charity scheme

On 29 March 2001 investigating officials of the Committee met with Walker and Lotterie at the offices of the Committee. They explained the Gold Charity scheme to the officials.

- The package offered to participants consisted of:
  - A 1/10-ounce gold coin.
  - Annual subscription to Gold Charity.
  - A monthly newsletter.
  - Shares in the company which controls Gold Charity.
- Participants are required to sell two gold coins to two other participants who are in turn each required to sell to two further participants. These sales occur in so-called right and left legs as indicated in the diagram

(<sup>1</sup>) In terms of Notice 1135 published in Government Gazette 20169 dated 9 June 1999 it is unlawful to directly or indirectly, operate, conduct, promote or cause to operate or participate in a pyramid promotional scheme. A "pyramid promotional scheme" means any plan or operation by which a participant gives consideration for the opportunity to receive compensation which is derived primarily from the person's introduction of other persons into a plan or operation rather than from the sale of products by the participant or other persons introduced into the plan or operation.

below. Should a participant sell more than two coins, these sales are called bonus sales and are placed on the participants left leg or right leg, depending on where they are needed by the participant. The bonus sales are placed on the right or left legs in the first available position. The coins sell at R595 each. Rand Refinery sells  $\frac{1}{10}$ -ounce gold coins to buyers at R420 each. If sent to a buyer by post, the price is R500.



- The commission structure or "compensation plan" for selling the coins is based on a "binary unlimited matrix". The binary refers to the two legs and the "unlimited" means that there is no limit to how deep the downline is. Participants receive commission for all sales, no matter how many levels there are in their downlines. The commission structure is based on five groups of nine sales and one of five sales.

<b>First step</b>	<b>First nine sales (total 9 sales)</b>	<b>R300</b>
<b>Second step</b>	<b>Second nine sales (total 18 sales)</b>	<b>R150, a total of R450</b>
<b>Third step</b>	<b>Third nine sales (total 27 sales)</b>	<b>R150, a total of R600</b>
<b>Fourth step</b>	<b>Fourth nine sales (total 36 sales)</b>	<b>R300, a total of R900</b>
<b>Fifth step</b>	<b>Fifth nine sales (total 45 sales)</b>	<b>R300, a total of R1 200</b>
<b>Sixth step</b>	<b>Final five sales (total 50 sales)</b>	<b>R600, a total of R1 800</b>
<b>50 sales of gold coins = one pay cycle =</b>		<b>R1 800</b>

The sales of gold coins not credited to a current pay cycle are moved to the next cycle. The monetary rewards are dependent on Gold Charity's " $\frac{1}{3}$ -rule". The " $\frac{1}{3}$ -rule" requires that, in order to receive payments for steps and cycles during any pay cycle, at least  $\frac{1}{3}$  of the sales credited to a participant's downline must come from one of the two legs.

- Participants receive 100 shares in Gold Charity for each batch of 50 sales.
- Participants receive an additional coin for each batch of 75 sales.
- The maximum earnings per week per participant is limited to R25 000.
- Seventy percent of the gross margin is earmarked for commission payments and the remaining 30 percent is for "administration". The gross margin is R595 less VAT and the cost price of the coin.
- It was planned to have a "Mandela" gold coin and it was alleged that the Nelson Mandela Children's Fund was to be placed at the top of the binary system.

- Walker said that 99 per cent of participants would participate because of the "business opportunity". Walker denied that he had made this statement at a meeting of the Committee held on 10 May 2001.
- Lotterie said he studied agriculture and theology. Some time ago he had a vision to help the poor and destitute in South Africa. He was asked to give a quantified sketch of how poverty in Guguleto and Langa will be alleviated by the Gold Charity scheme. He could not answer the question.

#### **4. The Gold Charity website**

The following are quoted from documents supplied by Walker to the Committee on 29 March 2001.

"The Gold Charity Website Gold Charity Fund was formed for many reasons. Some of them being:

- The benefit to charities
- The opportunity for people to own their own business
- The reduction of poverty
- The earning of much needed foreign revenue for South Africa
- The increase of gold demand in the form of gold coin sales world wide
- The burden placed on the government by charity organizations will be significantly reduced.

#### **Purpose and Objectives**

The Gold Charity Fund is a world first for charities. Well-known charities form the prime position in the hierarchy of the Fund. The charities would rather we did not publically display their names, however a full list of all the charities that benefit will be available. The Fund also empowers people by providing them with a unique opportunity to grow their own business and earn an income, thereby reducing poverty.

The Object of the Fund is to enroll at least one million subscribers in South Africa and to expand globally into many millions, thereby becoming one of the biggest gold coin marketing companies in the world, earning foreign currency. However, the company cannot do this without the help of its subscribers who, instead of sitting back and waiting for things to happen, must work to expand their business.

#### **Subscription**

Gold attracts gold, and we have chosen as our product the  $\frac{1}{10}$ -ounce gold coin/medallion. To join the Gold Charity Fund requires an investment of R595.00 (\$115.00 for international subscribers). For this you receive:

- A  $\frac{1}{10}$ -ounce gold coin



- Annual subscription to the Fund
- A monthly newsletter
- Shares in the company which controls the Fund

Participation in the compensation plan is entirely optional as you may join to aid charity and have an investment in the form of a gold coin. Isn't it nice to know that everyone who joins helps make a contribution to others who are less fortunate than themselves?

### **Business Plan**

Anyone who joins the Gold Charity Fund can grow his/her own business by using the proven marketing plan called the 'two leg matrix'. To qualify to earn compensation, all you have to do is introduce two people to the Fund. They in turn become subscribers and do the same. You benefit from all new subscribers who join in your business. If you choose to invite others to subscribe to the fund you could receive benefits and compensation more quickly if you wait for others to help build the subscription base.

The computer monitors your business and you receive compensation, paid directly into your bank account, for every nine people who join your enterprise, providing that you have at least one third on the one leg and two thirds on the other, e.g. three on one leg and six on the other. Compensation is paid for team sales, not for recruitment of people into the business.

The Fund's computer programme monitors its weekly income and after paying VAT and purchasing coins, deducts thirty percent for administration costs. The remainder goes into a trust fund controlled by an Audit Committee of the company. Your compensations are paid from this fund.

A well known Computer group and Bank will deal directly with compensation payments and the entire business will be hosted on an internet website. However, any person can join as a subscriber without having any knowledge of e-business by merely filling out an application form and paying the money into the bank account of the Gold Charity Fund.

### **Shares**

All subscribers will become shareholders in the public company that controls the Fund. By joining the Fund, shares and a gold coin will be issued to them. As your business grows, more shares and coins (in addition to compensations) will be issued".

## **5. The meeting of the Committee on 5 April 2001**

At its meeting held on 5 April 2001 the Committee resolved to undertake a section 4(1)(c) investigation into the business practices of Gold Charity and its directors in respect of the activities of Gold Charity. The Committee further resolved that

Walker and Lotterie be invited to address the Committee at its meeting on 10 May 2001.

## **6. The meeting between representatives of Gold Charity and the Committee on 10 May 2001**

Mr Walker and Lotterie and legal representatives of Gold Charity, an attorney (hereafter called the attorneys) and counsel, addressed the Committee at its meeting on 10 May 2001. Four copies of letters, all dated 3 May 2001, were handed to the Committee. These letters, from Gold Charity, were addressed to respectively President T Mbeki, Mr T Mboweni, Mr A Erwin and Mrs P Mlambo-Ngcuka.

- The letter to President Mbeki stated: "We are very pleased to have had the opportunity of prior discussions with Mr Nelson Mandela who felt that we should keep you informed of our intentions and our progress".
- The Governor of the South African Reserve Bank, Mr Mboweni, was informed: "Mr Mandela has been approached and has graciously agreed that we may portray his bust on a new  $\frac{1}{10}$ -ounce gold coin. However, in doing so, he wished us to first discuss the opportunity and protocol of doing so with you". No evidence could be produced that Mr Mandela agreed that Gold Charity may portray his bust on a new  $\frac{1}{10}$ -ounce coin.
- Mr A Erwin, Minister of Trade and Industry and Mrs P Mlambo-Ngcuka, Minister of Minerals and Energy were informed: "We are very pleased to have had the opportunity of prior discussions with Mr Nelson Mandela and we have since communicated with both President Mbeki and Mr Mboweni".

The Committee was of the opinion that the letters were misleading. The letters to the Ministers of Trade and Industry and Minerals and Energy respectively were *inter alia* informed on 3 May 2001 that "... we have since communicated with both President Mbeki and Mr Mboweni". The communications to President Mbeki and Mr Mboweni were, however, also dated 3 May 2001.

The Committee noted that the package now included a "... seven night hotel accommodation (within South Africa), which excludes meals and transport". Counsel requested that Gold Charity be afforded the opportunity to present a submission to the Committee 24 May 2001. The Committee acceded to this request and resolved that, depending on the contents of this submission, to undertake a section 8(1)(a) investigation into the business practices of Gold Charity and its directors in respect of the activities of Gold Charity.

## **7. Correspondence after the meeting of the Committee on 10 May 2001**

**7.1** On **23 May 2001** the attorneys requested that the submission be handed in on 28 May 2001. The Committee acceded to their request. Also on 23 May 2001 the

◦ administration	<u>R 68.01</u>
Total	<u>R595.00</u>

- "We would appreciate being given another hearing at the next meeting of the Committee which we believe is on the 13th and 14th June 2001".

**7.6** On 31 May 2001, at 11h02 the Committee responded to the letter of the attorneys dated 30 May 2001 (see 7.5). The following issues were raised:

- The fax of the attorneys dated 28 May 2001 (which they later stated was incomplete) was received at the Committee's offices at 17h44. This was after the official office hours. The Committee responded to this fax at 14h47 on 29 May 2001. On the same day, 29 May 2001, at 16h22, again after the official office hours, the attorneys transmitted the pages they overlooked to the offices of the Committee. This was some time after the Committee responded to their "incomplete" fax.
- The further documentation which they faxed to the Committee must obviously be considered by the Committee. The attorneys were informed that they were welcome to address the Committee on 13 June 2001.

**7.7** Also on 31 May 2001 the attorneys wrote to the Committee. They wanted to know whether the secretariat "... have now obtained all the information that you require in regard to the operation of our client's business. In the event that such requirements have not been met, please advise us what further information you require as a matter of urgency".

**7.8** At 15h02 on 1 June 2001 the Committee responded to the attorneys' letter in 7.7 above. They were informed that it was not for the secretariat to decide whether the information was sufficient. They were further informed that the additional documentation which they faxed to the Committee would obviously have to be considered by the Committee.

## **8. The meeting of the Committee on 14 June 2001**

Walker and Ms Mahlasela for Gold Charity, assisted by the attorneys and counsel, addressed the Committee on 14 June 2001. At the outset counsel said:

"Just for the record I'd like to say again that in terms of law I want to reserve our rights with regard to the argument on the constitutionality of the Act".

During the discussions counsel *inter alia* said:

"... my clients have been through here before this Committee, they have backed away systematically from the original approach which seems to have been used. ***There is absolutely no indication now on their website or in***



**any of their marketing that there will be a Mandela coin**" (Committee's own emphasis).

and

"So there are specific things which they can actually deliver and they are not promising things which may exist in the future. To that extent there is no doubt in my mind that **the intervention of this Committee has prevented something going horribly wrong** and whether or not that e-mail, the original e-mail, which called this Committee to ... to become alert was valid or not. I have no doubt that the person who composed that e-mail could not have been that wrong about specific details like the possibility of the Mandela coin. He must have heard that and he must have heard that from somebody within my clients. It may not necessarily have been Mr Walker but **the point I am making is that the Committee stepped in so quickly and has put a stop to that** and that is exactly the function of this Committee and it has succeeded so that the position now compared to the position in January is infinitely safer for the public because there is not going to be that level of basically misrepresentation". (Committee's own emphasis).

Statements such as Gold Charity "... backed away systematically from the original approach"; "... there is no doubt in my mind that the intervention of this Committee has prevented something going horribly wrong"; "... the point I am making is that the Committee stepped in so quickly and has put a stop to that" and "... the position now compared to the position in January is infinitely safer for the public because there is not going to be that level of basically misrepresentation" are all admissions that consumers were indeed misled. The question is whether the amended scheme does not contain any practices which could be regarded as unfair business practices in terms of the Act.

Counsel referred to a previous investigation which the former Business Practices Committee<sup>(1)</sup> (BPC) undertook<sup>(2)</sup>. In the Omega scheme participants were required to pay R6 400. Counsel argued that the money which Gold Charity participants pay "... is nowhere near as damaging to a person's personal finance as was the amount of Omega". This argument does not hold water. The amounts are relative. Consumers who lost R595 of their total assets of R1 000 are infinitely worse off than those consumers who lost R6 400 of their total assets of R100 000.

Counsel requested the Committee to consider an arrangement with Gold Charity in terms of section 9 of the Act<sup>(3)</sup> should it "... still have concerns after today". The Committee considered counsel's request, and resolved that, to enable it to come to an arrangement in terms of section 9 of the Act, it was imperative to know exactly what the terms of the arrangement should be. Counsel stated Gold Charity "... have backed away systematically from the original approach". In the original scheme the "Gold Charity Fund Trust" and a "Trust Deed" was not mentioned, the hotel

<sup>(1)</sup> The Business Practices Committee was the predecessor of the Consumer Affairs Committee.

<sup>(2)</sup> See the BPC's Report 66: *Omega Power Trust Marketing*.

<sup>(3)</sup> See section 1 "The Consumer Affairs Committee" above.

accommodation was not part of the package and a "Mandela coin" were to be marketed.

The Committee therefore resolved that the a letter should be addressed to Gold Charity, advising it that the investigation was starting *de novo*. It requested Gold Charity to give a detailed explanation on the business practices as it now stood. In the meantime they were requested to register their Trust. They were also requested to appoint a Board of Trustees and to stop using recognized public figures' names unless they had received written permission from that person to use their names.

#### **9. Information required from Gold Charity on 21 June 2001**

The following information was requested from Gold Charity on 21 June 2001:

- (a) The history of GCF, such as when it started business and when the first coins were sold.
- (b) The exact detail of the product.
- (c) The marketing and compensation plan in detail. In previous correspondence it was stated: "Each downline leg must contain at least 1/3 of the total sales on which the compensation is paid. E.g. 6&3 or 4&5 at the 9 Team Sales level. When you have achieved 50 Team Sales, you have completed a 'cycle'. Upon completion of a 'cycle', you start over again; all Team Sales that were not used to complete a 'cycle' are used in the calculation of compensation for the next 'cycle'. For example, assume that you have 29 Team Sales in your right downline leg and 26 Team Sales in your left downline leg. After 25 Team Sales are deducted from each downline leg for the first cycle, for which you would be paid, 4 Team Sales in your right downline leg and 1 team sale in your left downline leg would remain to be counted as Team Sales for your next cycle". With all due respect, the chances that consumers in the rural areas will understand the preceding, is probably zero.
- (d) Marketing brochures that are made available to prospective clients.
- (e) The number of clients who have already bought gold coins and their provincial distribution.
- (f) Copies of the replies to GCF's letters dated 3 May 2001 to President T Mbeki, Mr T Mboweni, Mr A Erwin and Mrs P Mlambo-Ngcuka.
- (g) Confirmation that the "Notarial Deed of Trust" has been registered.
- (h) The written acceptance by the trustees to act as trustees of the Gold Charity Fund Trust.
- (i) The name and address of the auditors who will audit the books of (i) Gold Charity Fund Trust and (ii) GCF.

- (j) The agreement with the entity which will make the hotel accommodation available and each and every condition applicable to taking up the accommodation.
- (k) It was previously stated that R160.09 (26.9 per cent) of the R595 payable to join the business is earmarked for commission **and** charities. How much will be paid to charities?
- (l) Less than 26.9 per cent of the R595 will allegedly be paid to charities. Are then the words "Charity Fund" in the name Gold Charity Fund Investments (Pty) Ltd not deceptive?. An unfair business practice in terms of the Act is any business practice which, directly or indirectly, has or is likely to have the effect of harming the relations between businesses and consumers; unreasonably prejudicing any consumer; **deceiving** any consumer; or unfairly affecting any consumer.
- (m) The latest financial statements, which must include an income statement and a balance sheet. Preliminary statements will suffice.
- (n) All other relevant information which will assist the Committee to reach a conclusion".

Gold Charity was requested to provide the required information not later than 5 July 2001. On 6 July 2001 the attorneys asked permission to submit the required information on 11 July 2001. The Committee acceded to this request.

#### **10. Letter from the Nelson Mandela Children's Fund to the Committee**

On 18 June 2001 the Chief Executive Officer (CEO) of the Nelson Mandela Children's Fund wrote to the Committee:

"I enclose a copy of a fax received by one of our staff members. It was sent to her by someone attempting to recruit her into the above investment fund. We are disturbed to see that our organization is still mentioned as an 'example' of the charities who would benefit from this scheme, this despite having formally requested the above investment fund not to use our name. The 'recruitment letter' also mentions the names of Mister Mandela's grand daughter and that of Mr Cyril Ramaphosa, who is a trustee of our sister organisation, the Nelson Mandela Foundation. It furthermore talks of a 'Mandela Rand' and even tries to infer that the 'former president' was involved with the evolution of the idea. All of this seems designed to mislead prospective investors."

On 21 June 2001 the attorneys wrote to the CEO of the Nelson Mandela Children's Fund:

"We act on behalf for the Gold Charity Fund Investments Ltd,

Our clients have furnished us with a copy of your fax dated 18 June 2001 addressed to the Director National Inspectorate, Consumer Affairs Committee, Department of Trade and Industry,

We are instructed to respond thereto as follows:

1. Clients have at no stage ever associated themselves with your organisation, used it as a marketing tool nor encouraged any of their agents to do so.
2. When it was first discovered by clients that some of their agents had inadvertently done so, clients immediately requested any agents that were doing so to desist from the said practice. The agent who is the source of the misrepresentation was further instructed to correct this.
3. This latest fax that you referred to, apparently emanates from a new agent and clients have no idea where the incorrect information was obtained. Apart from the reference to yourselves in the said fax, there are numerous other inaccuracies and misrepresentations in the said fax. Clients are, however, investigating the matter as a matter of urgency.
4. Clients have in the past few months been dealing with the Consumer Affairs Committee of the Department of Trade and Industry to correct the misconceptions about their business. In doing so, they have set in place structures to try and eliminate this type of conduct from their agents, through an agreement with their agents.
5. Clients have further refuted the dangerous allegation that their business is a pyramid scheme, as it is a multi-level marketing scheme which is perfectly legal.
6. Clients apologise for the abovementioned incident and assure you that they will continue in their efforts to root out the source of these misrepresentations and misconceptions".

The statement in paragraph 4. above is not entirely correct. The attorneys clients have not "...in the past few months been dealing with the Consumer Affairs Committee of the Department of Trade and Industry to correct the misconceptions about their business". The Committee was undertaking an informal investigation in terms of section 4(1)(c) of the Act to establish whether Gold Charity was involved in unfair business practices as defined in the Act.

**11. The response of Gold Charity to the letter of the Committee dated 21 June 2001**

The following was the attorney's response to the letter of the Committee dated 21 June 2001:

"We are instructed to respond to the former letter, ad seriatim as follows:

- a. Nico Lottery and Chris Walker had been involved in network marketing for a number of years and wanted to try and change perceptions of network marketing. They wanted to start a network marketing business that would bring money into South Africa and earn foreign currency for the country, as opposed to the pre-existing network marketing companies which were all foreign and resulted in money flowing out of the country. They therefore established a new company which was registered with the Registrar of

Companies on the 16th January 2000 and coins were sold by the company from that date.

b. The exact details of the products sold are:

- a one/tenth ounce Kruger rand coin
- 100 shares in the company Gold Charity Fund Investments Limited
- 7 night hotel accommodation (with food for own account)

c. The marketing and compensation plan is as follows:  
commission is paid for team sales in the following manner;

• 9 sales	=	R300.00
• 18 sales	=	R150.00
• 27 sales	=	R150.00
• 36 sales	=	R300.00
• 45 sales	=	R300.00
• 50 sales	=	R600.00
• Total	=	R1 800.00

this is a cycle and the computer continues to pay for every 9 sales. To qualify an independent agent must make two sales, one on the left and one on the right. For commission to be paid there must be a minimum of one third sales on the weaker side eg. 6 and 3 or 5 and 4.

In regard to the last sentence thereof we are instructed to advise that this is based on an inaccurate assumption. The majority of the customers currently are white people conducting network marketing through the internet.

d. These will be sent to you directly by client via courier.

e. To date the total number of sales is 1995. Clients are unable to furnish an exact Provincial distribution of clients however an estimate is as follows;

North West Province	30%
Kwazulu Natal	30%
Gauteng	10%
Northern Province	10%
Eastern and Western Cape	10%
Northern Cape and Free State	10%

f. It is submitted that the details requested herein are not relevant as the Mandela coin is not yet being marketed. Copies of the said correspondence were furnished to you to substantiate the representations made to you by clients i.e. to show that this was not a hoax. Clients will nevertheless send to directly to you by courier copies of the responses received from President Thabo Mbeki's office and Mr Alex Erwin's office. **(These responses were not received by the Committee).**

g. The registration of the Trust Deed has been suspended until such time as the matter has been settled with yourselves. To proceed with the registration of the Trust may embarrass the Trustees in the event that you proceed with the investigation of client's business.



- h. Not applicable - see g above.
- i. Sandra Carpenter Auditors, P O Box 976, Strand.
- j. The Agreement is between Leisure Marketing and the respective hotels. Gold Charity Fund Investments Limited purchases the vouchers from Leisure Marketing and the details thereof will be sent to you by client directly by courier. **(The details were not received by the Committee).**
- k. The first position in the compensation plan is called "Combined Charity". Funds will be generated as per the marketing plan for example 500 sales from the left and 500 sales from the right and that would be 1000 sales and R36 000,00 therefrom would be earmarked for charity.
- l. It is submitted that the words "Charity Fund" in client's name are not deceptive. Clients do in fact pay a significant portion of the revenue derived from their business to charities which is a significant and unusual feature in any business. It is further submitted that 26.9% of the gross income (not nett) is a significant amount and would be commendable in most people's eyes. To illustrate the point further the breakdown of the amount of R595.00 is as follows;
- |    |                        |         |
|----|------------------------|---------|
| 1. | coin and postage       | R300.00 |
| 2. | to VAT                 | R41.30  |
| 3. | brochure and forms     | R25.00  |
| 4. | commission and charity | R160.09 |
| 5. | administration         | R68.61  |
|    | Total                  | R595.00 |

It may further interest the committee that the name Gold Charity Fund Investments was not clients' first preference. Client originally sought the name 'Gold Investments'. A copy of correspondence from the Registrar of Companies is annexed hereto.

- m. Clients do not have any financial statements that are available at present, having only begun operation on the 16th January 2000. All their books are currently with their auditors who are in the process of preparing their financial statements. Clients undertake to furnish you with the same as soon as they become available.
- n. All the other relevant information has already been furnished to the committee by correspondence and in oral submission at the two meetings held with the committee.

Should the committee however require any further information, please advise us and we will endeavour to furnish you with the same as soon as possible".

It appeared from paragraph k. above that the amount earmarked for charity was 6.05 per cent of total turnover [(36 000 {"earmarked for charity"} times 100) divided by (1 000 {coins} times 595 {selling price per unit})]. Yet, in paragraph l. above it is stated that: "Clients do in fact pay a significant portion of the revenue derived from their business to charities which is a significant and unusual feature in any business.

It is further submitted that 26.9% (**R160.09 as a percentage of R595, Committee's own insertion**) of the gross income (not nett) is a significant amount and would be commendable in most people's eyes". The R160.09 in paragraph I., however, includes "commission and charity". The attorneys were called by an official on 17 July 2001 about this apparent contradiction and they responded as follows:

"In regard to your enquiry, we are instructed to advise that there is no contradiction between (K) and (L) of our submissions dated 11th July 2001. Clients instructed to advise that percentages are not necessarily an accurate manner of assessing the amount paid to charities as this is done mathematically in accordance with the marketing and compensation plan in terms of which commission is only received for every nine sales. You will further note that the first position in the entire compensation plan is allocated to charities therefore charities will always derive commission from every nine sales made in terms of which commission is payable. The amount of R160.09 out of every R595.00 paid, is allocated to commission and charity so that when nine sales are made and commission is payable, this amount is used to fund the said commission payable".

**12. The meeting of the Committee held on 18/19 July 2001 and the resolution to undertake a section 8(1)(a) investigation**

The Committee considered the response of the attorneys to the Committee's letter dated 21 June 2001 and resolved that the crux of the scheme had not been amended. The amendments, such as the fact that a person was no longer required to pay R595 to become an agent and the offer of the hotel accommodation were cosmetic. The Committee noted that no established Gold Charity infrastructure existed, yet the entity continued with the marketing of gold coins. Unsubstantiated claims were also made in Gold Charity's brochures, such as "Bring foreign investment into South Africa", "Provide financial upliftment for ALL of us" and "Sound Investments".

The Committee therefore resolved to undertake a section 8(1)(a) investigation into the Gold Charity Fund Investments Ltd (2001/000710/06), NF Lotterie, CM Walker and any director, employee, agent and/or representative of any of the aforementioned in respect of the activities of Gold Charity Fund Investments Ltd.

This was conveyed to the attorneys in a letter dated 23 July 2001. The following is a copy of this letter:

"Thank you for the documentation received in response to the Committee's letter dated 21 June 2001. These were discussed at the meeting of the Committee held on 19 July 2001.

The Committee noted that no established infrastructure exists to back up the claims made by Gold Charity in its brochures. Moreover, claims such as "Bring foreign investment into South Africa", "Provide financial upliftment for ALL of us" and "Sound Investments" are meaningless. The involvement of Mr Mandela in Gold Charity is also implied by the image of his face on the first page of the brochure. Furthermore the Committee has reason to believe that a substantial percentage of potential

participants would lose at least the difference between the joining fee of R595 and the eventual selling price of their 0.1 ounce Kruger coins.

The Committee therefore resolved to undertake a section 8(1)(a) investigation into the business practices of Gold Charity Fund Investments Ltd. The following notice will be published in the Government Gazette of 3 August 2001:

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

Gold Charity Fund Investments Ltd (2001/000710/06), NF Lotterie, CM Walker and any director, employee, agent and/or representative of any of the aforementioned in respect of the activities of Gold Charity Fund Investments Ltd.

Any person may within a period of thirty (30) days from the date of this notice make written representations regarding the above-mentioned investigation to: The Secretary, Consumer Affairs Committee, Private Bag X84, PRETORIA, 0001. Tel: 012-310-9562 Fax: 012-320-0579 Ms L van Zyl [Ref. H101/20/10/11(01)]".

### 13. The withdrawal of the notice of the section 8(1)(a) investigation

Notice of the section 8(1)(a) investigation was to be published under Notice 1765 in Government Gazette 22509 dated 3 August 2001. On 2 August 2001, applicants Gold Charity Fund Investments Ltd, Christopher Mark Walker and Nicolaas Frederik Esaias Lotterie filed a **Notice of Motion** against respondents Prof Tanya Woker N O, The Consumer Affairs Committee, The Minister of Home Affairs and The Minister of Trade and Industry at 10h00 on 2 August 2001 in the High Court of South Africa (Transvaal Provincial Division)<sup>(1)</sup>. The judge issued a rule *nisi* calling upon the respondents to show cause on 28 August 2001 why an order should not be made that they be interdicted and restrained from proceeding with a section 8(1)(a) investigation into the applicants' business practices. Publication of the notice of the section 8(1)(a) was consequently withdrawn.

### 14. The Gold Charity website on 16 August 2001 and subsequent events

On **16 August 2001** an official informed the attorneys that on 14 August 2001, the Gold Charity website contained a "newsflash" to the effect that the former President, Mr Mandela, has granted his consent for his image to be used on a gold coin marketed by Gold Charity, and that "... it was now only a matter of complying with formalities before the coin becomes a reality"<sup>(1)</sup>. Also in his founding affidavit attached to the **Notice of Motion**, Walker stated that Gold Charity "wishes to sell to

(1) See case 18347/2001

(1) This, despite the solemn assurance given by counsel on 14 June 2001 that "There is absolutely no indication now on their website or in any of their marketing that there will a Mandela coin".



the public a gold medallion with Mr Nelson Mandela's face embossed thereon. A supporting affidavit by Ms Tembi Mahlasela claimed that she was "requested to approach Mr Mandela" to ask him whether he would consent to having his face embossed on a 1/10-ounce gold coin. She stated that he "would consent to his face appearing on a gold coin but that whatever steps had to be taken had to be taken in accordance with the law. Mr Mandela was of the viewpoint that all the necessary authorities had to be approached..." She further stated that she "pursuant to Mr Mandela's request..." wrote a letter to the Minister of Trade and Industry. Ms Mahlasela's affidavit is evidence that she was an active representative of Gold Charity.

The newsflash was followed up with Mr Mandela's office and he denied the contents thereof. Mr Mandela provided an affidavit in which he stated that he denies categorically that he has ever given his consent to Gold Charity to use his name or "bust" for any purpose whatsoever. He denied having any association with Gold Charity and further stated that, had he been approached by any person with such a request, he would have refused permission and would have referred such person to his legal advisors who would have confirmed his refusal. Mr Mandela further stated that he is disturbed by the methods employed by Gold Charity in marketing their product as harm may be caused to persons who may assume, incorrectly, that he associates with them.

The attorneys were also informed that the use of false information was viewed in a serious light and that the "... respondents' answering affidavits in matter 18347/2001 will be delivered as soon as possible and that the respondents will request the court to anticipate the return day in order that the matter be dealt with on Monday 20 August 2001 or as soon thereafter as the matter may be heard" and that the Court will be requested on 20 August 2001 to urgently deal with the matter.

During the afternoon on **16 August 2001** the attorneys requested the Committee by fax to postpone the matter as the attorney dealing with the matter was out of office and would return on 20 August 2001 only. They stated that the Committee's notice of the proposed investigation is

"... wholly unreasonable as it does not afford our client the opportunity to respond to your allegations. Our client will suffer irreparable harm should you proceed ... as indicated. All our client's rights are reserved herein."

On **17 August 2001** the affidavit attested to by Mr Mandela was forwarded to counsel who in turn forwarded it to his client. On **20 August 2001** a letter was received from Walker in which he *inter alia* stated that the

"... company has no choice but to close immediately. I was misled on several occasions by one of the company directors regarding the permission for the Mandela coin. In my opinion the company can never recover and there is no point in carrying on with business. I was truly shocked on Friday when I saw the affidavit from Mr Mandela. I would apologise personally, as it was not my intention to mislead anyone."

On **21 August 2001** the Committee approached the Court on an urgent basis to set aside the rule *nisi* granted on 2 August 2001. The application was granted by the Court

Arrangements were made to proceed with the publication of the section 8(1)(a) notice on 22 August 2001. On **22 August 2001** the Committee faxed a copy of Notice 1905<sup>(1)</sup>, which was published in Government Gazette 22600 dated 22 August 2001, to Walker<sup>(2)</sup>.

The following day, on **23 August 2001** the Committee received a letter from the attorneys. They stated:

"We refer to the above matter and further to your telefax even dated, the content of which we have noted. Please be advised that our client has ceased the business practice which you now intend investigating".

On **29 August 2001** officials of the Committee accessed the website of Gold Charity at <http://www.goldbiz.co.za>. The message displayed on the screen was:

"The site is temporarily unavailable. We apologize for the inconvenience".

On **3 September 2001** the Committee wrote to the attorneys:

"On 20 August 2001 the Committee received a fax from Mr C M Walker. He stated *inter alia*: 'In my opinion the company can never recover and there is no point in carrying on with the business'. You informed the Committee on 23 August 2001: 'Please be advised that our client has ceased the business practices which you now intend investigating'.

I accessed the Gold Charity website at 08h15 on 29 August 2001. The message displayed was: 'The site is temporarily unavailable. We apologize for the inconvenience'. The word 'temporarily' obvious means that the website, and therefore the business of your client, will be resumed at some future date. Please advise me whether my assumption is correct.

It appears that Gold Charity clients only received their gold coins after they paid the membership fee of R595. How many Gold Charity members have paid their membership fees but have not yet received their gold coins? Your response to this letter is required as a matter of urgency, but not later than 7 September 2001".

On **7 September 2001**, at 14h55, the attorneys informed the Committee that their client "... continues to operate as coin dealers but have ceased its operation in respect of multi-level (network) marketing. We are further advised by our client that it is in the process of distributing the coins to those members who have paid their fees". An official immediately called the attorneys and asked for an explanation on how their clients' market the gold coins and the detail about the distribution of the coins to the Gold Charity members.

(<sup>1</sup>) This Notice replaced the withdrawn Notice 1765 in Government Gazette 22509 dated 3 August 2001 - see section 13 above.

(<sup>2</sup>) A copy of this letter was also faxed to the attorneys.

## 15. Gold Charity, Walker and Lotterie - chameleons?

On **20 August 2001** Walker informed the Committee that the "... company has no choice but to close immediately. ... In my opinion the company can never recover and there is no point in carrying on with business", and on **23 August 2001** the attorney informed the Committee that "... our client has ceased the business practice which you now intend investigating"<sup>(1)</sup>. During the next few weeks it appeared that Gold Charity did not close "immediately". The notice of the section 8(1)(a) investigation read *inter alia*:

"... notice is herewith given that the Consumer Affairs Committee intends undertaking an investigation ... into the business practices of Gold Charity Fund Investments Ltd (2001/000710/06), NF Lotterie, CM Walker and any director, employee, agent and/or representative of any of the aforementioned in respect of the activities of Gold Charity Fund Investments Ltd".

On 23 August 2001 the investigation was ongoing and the Committee therefore may investigate, in terms of the section 8(1)(a) notice of the investigation, the existing business practices of *inter alia* Gold Charity, Walker and Lotterie.

On **11 September 2001** an official called the attorneys and asked them to respond to the request of 7 September 2001, that is an explanation on how their clients' market the gold coins and the detail about the distribution of the coins to the Gold Charity members, by 14 September 2001.

On **13 September 2001** an official of the South African Mint called an official of the Committee. The official of the Mint received a number of telephone enquiries from consumers about a "Mandela Coin". Following the discussion between officials of the Mint and the Committee, the official of the Committee located a website with the address <http://home.intekom.com>. The following are extracts from this website:

- "Gold is still the best hedge against inflation and the new and unique, Nelson Mandela, 1/10th ounce Gold Medallion is set to break all sales record"
- "One way to do this is to join Gold Charity Fund in South Africa which has an International Programme designed to benefit all its members."
- "Introducing the new Nelson Mandela 1/10th ounce gold medallion."
- "The Gold Charity Fund. Offering the all new and unique Nelson Mandela 1/10th ounce Gold medallion."
- "The company is South African, the product is for the good of our country, some extremely influential individuals are already aboard or in the process of coming aboard ... "
- "The new Mandela medallions will be minted in South Africa..."

<sup>(1)</sup> See section 14.

The following information is the latest on this issue from Gold Charity Fund themselves:

**To all Gold Charity Fund Agents,**

**Update August 30:**

1. The Company has experienced some unexpected operational difficulties in its relationship with the Dept of Trade and Industry in South Africa, and consequently has changed its business operation.
2. The Gold Charity Fund Investments Ltd Company (GCF) now is a registered coin dealer, registered with the South African Association of Numismatic Dealers. This company is the provider of the product/s to the Network in which the company's agents work their individual businesses.
3. The MLM database has been given to an offshore company and the MLM genealogy has been moved there.

The change will benefit the Networkers as follows:

- o in terms of more advantageous tax laws,
- o safeguard the Company from the potential continuing financial burden in dealing with ongoing DTI issues in South Africa,
- o easier access to International markets, and dealing with Forex and Gold coin exporting,
- o the potential of a US\$ income for the agents.

The Company believes that change will be beneficial to the operation of your business.

**4. Company Costs and Commissions:**

In attending to the ongoing DTI issues, the Company felt it necessary to appoint the best legal representation to safeguard the interests of all its agents. The legal cost of representation has been very expensive to the Company, and has affected the normal operation of the business in terms of the payment of commissions. The Company believes that it has acted in the best interest of the agents. It aims to soon be in a position to tend to the issue of bringing the backlog of coins and commissions up to date.

**5. Delivery of Coins:**

The issues outlined above have resulted in the delay of the launch of the eventual product and consequently in the delay in the delivery of coins in general. The Directors felt that majority of agents would prefer to benefit from the receipt of the first issue of our own coin. It has become evident however, that the agents' activity has slowed down due to uncertainty resulting from delayed deliveries. 1/10th oz Kruger Rands have been delivered to some agents who became worried by the situation. The Company requests that all the remaining agents please be patient in this regard.



## 6. The web site:

Adjustments need to be effected at the website. The IT people are busy with it right now. You will find a "work in progress" notice on the website for this period. All communication will be placed here until further notice.

## THE FUTURE:

- Don't forget, since registration of the Company, the goal of the Directors has been to launch the company with a product UNIQUE to the opportunity. The new company still has this objective. With respect to this objective we are still in this PRE-LAUNCH phase. The problems that the Company has had are those of a NEW BUSINESS operating in changing circumstances, and a unique area of business where regulatory controls are also NEW, and to a degree uncertain. These are the issues that affect us on a daily basis. We are pioneers of this business.

The rewards that come to us when we succeed in overcoming these difficulties will be well worth the effort.

If we all pull together at this time, we will help our Company<sup>(1)</sup> over this hurdle, and make the new company the most exciting home based business opportunity available to all. The Directors thank all the agents for their patience and support during this time, and assure everybody that they are all busy resolving the problems.

## Update August 31:

The new offshore company will support our business operations and administer our genealogy. We all have a sense of urgency to get the web site up and running so business can go on. However, the IT people need to make our database compatible to their system. They expect it to be operational in a couple of days. The URL will be at [www.coinbusiness.net](http://www.coinbusiness.net)<sup>(1)</sup>. We shall notify you at this page when it is open for business.

Since the business is run by an offshore company, all business will be conducted in the same currency, US\$. The registration fee will become \$100. The good news is that the cycle value has increased to \$240, comprising of six steps of \$40 each. For South Africans there is still a period until 15 September to buy your coin at R595. From that period the dollar compensation plan becomes effective. If you thus have registrations and you want to do it at the reduced price, you can do so now. From 16 September registrations will only be accepted in US\$. The procedure will be explained on the GCI web site. Until then, please make use of their registration form whilst they are not yet online, by downloading, printing and faxing it through to the number included.

On **14 September 2001** an official wrote to Mr B Lever (Lever) of Bryan Lever Promotions CC. She informed him about the formal investigation by the Committee into the business practices of Gold Charity and Messrs Lotterie and Walker and the

<sup>(1)</sup> "Our company" being Gold Fund.

<sup>(2)</sup> Gold Coin Investments, trading as [coinbusiness.net](http://coinbusiness.net), appears to operate from the Caribbean. This has not yet been established by the Committee at the time this report was accepted by the Committee.

affidavit by Mr Mandela. He was further informed that his website contained a number of statements which is a blatant distortion of the truth and that it was designed to mislead consumers. Lever was requested to inform the Committee immediately about his involvement with Gold Charity and that he would delete all references to Mr Mandela on his website by 16h00 on the same day. He was finally advised that, should he not comply with the request, that the Committee, with the information at its disposal, will consider undertaking a formal investigation into his business practices at its next meeting.

Mr Lever responded at 14h06 on **14 September 2001** as requested. He *inter alia* stated:

- He was a member of Gold Charity, purchased gold coins from them and participated in their network marketing plan.
- Everything that he had published on his website about Gold Charity was taken from information that he has taken from their website in the past.
- He received no instruction from Gold Charity that the information was not true and he had no reason to believe that any of the information previously on their site was in any way false.
- The untrue references on his website would be deleted by the end of the day.

Also on **14 September 2001** the attorneys wrote to the Committee:

"Please be advised that our client will submit to yourselves a detailed report within the next 10 days".

On **17 September 2001** the Committee received a fax dated 14 September 2001 from Gold Charity. This letter, in Afrikaans, and signed by Lotterie, stated that Gold Charity:

- Was now a registered coin dealer and registered with the SA Numismatic Society.
- Procures/manufactures unique coins and distributes these to buyers internationally. Some of the coins will be minted in limited numbers to create "intrinsic" value. The smaller coins would probably be minted in unlimited numbers. Most of the coins will be commemorative coins/medals of important persons (dead or alive) and events.
- Sold the network part of the business to a foreign company.

The contents of Lotterie's letter did not contribute to a better understanding of the business practices of Gold Charity and an official of the Committee called the

attorneys and requested that Lotterie elaborate on some of the statements made in his letter of 17 September 2001.

Lotterie's "explanation" reached the offices of the Committee at 14h46 on 18 September 2001. His explanation, in Afrikaans, was garbled. It did transpire, however, that the updates of 30 August 2001 and 31 August 2001 to the Gold Charity agents,<sup>(1)</sup> were supplied by Gold Charity and that Gold Charity sold its database to Gold Coin Investments<sup>(2)</sup>. It further appeared that the delivery of 650 gold coins to Gold Charity clients was outstanding.

The following is an incomprehensible direct translation from the Afrikaans about these 650 coins.

"There are 650 coins outstanding. This was already conveyed to the agents of Gold Charity and the company undertook to catch up with this backlog. At present negotiations are conducted with investors who are willing to make an investment to the value of this backlog. The payment of the investors' money depends on an overseas investment which must be redeemed shortly. The attack on the WTC in New York delayed this payment and we have no final date on which the investment will be received. The paper records of their transactions were destroyed and the personnel who handled the transactions are dead. They are trying to create paper records from electronic records which are with Barclays Bank in London in order that the payment can be expedited".

It appears that Gold Charity, Walker, Lotterie and the attorneys are playing for time. It is not possible for the Committee, however, to wait until the parties decide when it is in their best interests to furnish the information required.

#### **16. The probability that Gold Charity participants will earn commissions**

A Gold Charity agent has to sell two gold coins<sup>(3)</sup>. These are assigned to two downlines or legs, labelled *left* and *right*. Any additional sites sold by an agent, are assigned below the agent's left or right leg. The persons canvassed by the agent, if they also wish to become agents, also have to sell two coins each. Theoretically this process could repeat itself indefinitely, hence the "unlimited matrix".

Agents receive commission for all sales, no matter how many levels there are in their downlines. The commission structure is based on 5 groups of nine sales and one of five sales as was set in "3. The scheme" above. To make for easier reading, the pay cycle reproduced below:

<b>First pay step</b>	<b>First nine sales (total 9 sales)</b>	<b>R300</b>
-----------------------	---	-------------

<sup>(1)</sup> See 13 September 2001 in section 14.

<sup>(2)</sup> See footnote 11.

<sup>(3)</sup> The Gold Charity scheme was based totally on that of SkyBiz, an internet scheme. The Committee also investigated the business practices of SkyBiz in terms of section 8(1)(a) of the Act. Walker admitted that he was a SkyBiz associate. See Report 90: SkyBiz - an internet scheme.

Second pay step	Second nine sales (total 18 sales)	R150, a total of R450
Third pay step	Third nine sales (total 27 sales)	R150, a total of R600
Fourth pay step	Fourth nine sales (total 36 sales)	R300, a total of R900
Fifth pay step	Fifth nine sales (total 45 sales)	R300, a total of R1 200
Sixth pay step	Final five sales (total 50 sales)	R600, a total of R1 800
50 sales of gold coins = one pay cycle =		R1 800

The sales of coins not credited to a current pay cycle are moved to the next cycle. The remuneration is, however, dependent on the "1/3-rule". The "1/3-rule" requires that in order to receive payments for steps and cycles, at least 1/3 of the sales credited to an agent's downline must come from one of the two legs.

The probability that Gold Charity participants will earn commissions is set out in the following table. The figures in the table present the best possible scenario. It is assumed that each and every participant succeeds in selling two coins. The result is a perfect symmetrical structure with the left and right legs in complete balance. Each leg contains 50 percent of a partner's total downline and the "1/3-rule" is therefore complied with. The figures in the table present *the best possible scenario*. In reality there will always be gaps and the "1/3-rule" would not always be achieved.

Table to illustrate the probability that Gold Charity participants will earn commissions

(a) Enrol- ment level (n) beneath YOU	(b) Parti- cants residing at level n	(c) total number of parti- cants in matrix	(d) Pay cycles and remaining sales (pay steps in brackets) Column (c), from last row up, divided by 50	(e) Amounts received by agents in column (b)
(n=0)	YOU	1	40 cycles, 47 sales (5)	1 [(40 x R1 800) + R1 200]
1	2	3	20 cycles, 23 sales (2)	2 [(20 x R1 800) + R450]
2	4	7	10 cycles, 11 sales (1)	4 [(10 x R1 800) + R300]
3	8	15	5 cycles, 5 sales (0)	8 (5 x R1 800)
4	16	31	2 cycles, 27 sales (3)	16 [(2 x R1 800) + R600]
5	32	63	1 cycle, 13 sales (1)	32 [(1 x R1 800) + R300]
6	64	127	31 sales (3)	64 x R600
7	128	255	15 sales (1)	128 x R300
8	256	511	7 sales (0)	256 x R0
9	512	1 023	3 sales (0)	512 x R0
10	1 024	2 047	0 (0)	1 024 x R0

\* It is assumed that "YOU" receives commission on his own purchase. This assumption has no influence on the conclusion reached

In the pure symmetrical structure, which resembles a pyramid, represented by the figures in the table, there are 2 047 participants on all 10 levels, including "YOU".

- This means that "YOU" would have achieved 40 times R1 800 (2 047 ÷ 50) plus 47 sales of coins, or R1 200.



- The two participants on level 1 will each have 1 023 participants in their downlines. They will each receive 20 times R1 800 ( $1\,023 \div 50$ ) plus 23 sales, or R450.
- The four participants on level 2 will each have 511 participants in their downlines. They will each receive 10 times R1 800 ( $255 \div 50$ ) plus 11 sales, or R300.
- The eight participants on level 3 will each have 255 participants in their downlines. They will each receive 5 times R1 800 ( $255 \div 50$ ) plus 5 sales which do not qualify for any payment, the first pay step being for nine sales.
- The 16 participants on level 4 will each have 127 participants in their downlines. They will each receive 2 times R1 800 ( $127 \div 50$ ) plus 27 sales, or R600.
- The 32 participants on level 5 will each have 63 participants in their downlines. They will each receive 1 times R1 800 ( $63 \div 50$ ) plus 13 sales, or R300.
- The 64 participants on level 6 will each have 31 participants in their downlines. They will each receive R600 for being on pay step 3.
- The 128 participants on level 7 will each have 15 participants in their downlines. They will each receive R300 for being on pay step 1.
- The persons on levels 9, 10 and 11, that is 256 and 512 and 1 024, or a total of 1 792, will receive no commission. They comprise 87.54 per cent of 2 047, the total number of participants in the symmetrical matrix.

It is clear from the table that, under the best of circumstances, at least 87.54 per cent of the Gold Charity participants will receive no compensation. These 87.54 per cent of the participants will contribute towards the money made by the remaining 12.46 per cent of the participants. This is clearly not in the public interest. The Peters in the scheme are robbed to pay the participating Pauls. If the Peters were aware of the probabilities of them earning commissions, they would probably not buy the package.

The 87.54% of the participants who will receive no compensation obviously have the gold coins they bought in the package. Each of them stand to lose R595 less the price at which they could sell their coins. One has to keep in mind that Walker told two investigating officials of the Committee on 29 March 2001 that 99 per cent of participants would participate because of the "business opportunity", although he denied having said so on 10 May 2001.

On 4 July 2001 the Committee received a copy of the Temporary Receiver's Report from the FTC. It appears from this report that the sales of SkyBiz were discontinued immediately when the Temporary Receiver took over the affairs of SkyBiz on 7 June 2001. The report stated that 1 801 830 (92.56 per cent) out of 1 946 630 SkyBiz participants received **no compensation** and that **228 individuals received 23 per cent** of all the commissions paid. These figures confirm that the overwhelming number of ZibyCom partners will receive no commission.

## 17. Consideration

The business practices of Gold Charity constitute unfair business practices. There are no grounds justifying these practices in the public interest. The following are the reasons for this standpoint:

- The Rainbow, Newport, Dunamus and Itereleng schemes (See Report 55: Rainbow Business Club and Others published under Notice 1958 dated 12 December 1997; Report 56: Newport Business Club (Pty) Ltd and Others, published under Notice 1349 dated 17 September 1997; Report 60: Dunamus Marketing CC and Others, published under Notice 963 dated 12 June 1998; and Report 62 AJ van Rensburg & Associates CC, also known as JVR & Associates CC, trading as Itereleng published under Notice 2797 dated 20 November 1998 respectively) were all closed down by the Minister because in all four reports the former Business Practices Committee (BPC) expressed the opinion that their members would be unreasonably prejudiced. The most important reason for this point of view was that at any time the overwhelming majority of its members were at risk. For example, in the Newport case, the BPC theorised that at least 75 per cent of the Newport *en commandite* partners would not recoup their investments. In fact, 61 per cent of the partner did not recoup any of their payments and another 30 per cent recovered less than their investment. Thus, 91 per cent did not recoup their payments, compared with only 9 per cent who have done so.
- Also in the case of Gold Charity there is evidence to show that most of its participants are at risk and will suffer loss. These participants and future Gold Charity participants would be **unreasonably prejudiced. This is not in the public interest.**
- Participants were misled by meaningless statements such as "Provide financial upliftment for ALL of us" and "Sound Investments". They were led to believe that they would earn commissions but the fact is that at least 87.54 per cent of the Gold Charity participants will receive no compensation. These consumers were grossly misled and this can not be justified in the public interest.
- Since the inception of the scheme consumers were misled to believe that Mr Mandela was in some way involved in the scheme. This, without any doubt, gave credence and respectability to the scheme

which undoubtedly led many consumers to participate. To use the name of an ikon such as Mr Mandela to mislead consumers is not only an unfair business practice, which is certainly not in the public interest, but it also borders on criminality.

- The name of the entity, Gold Charity Fund Investments Ltd, also misled consumers. The name could have misled many to believe that their participation would greatly assist charity organizations. It appears that only 6.05<sup>(1)</sup> per cent of Gold Charity's turnover was destined for charity

## 18. Recommendation

It is accordingly recommended that the Minister declares the unfair business practice unlawful in terms of Section 12(1)(b) of the Act whereby Gold Charity Fund Investments Ltd, CM Walker, NF Lotterie and T Mahlasela

- (a) invite, procure the attendance or attempt to invite or to procure the attendance of any person to a meeting, at which meeting such persons are invited or encouraged in any way, directly and indirectly, to partake in or become members of Gold Charity Fund Investments Ltd,
- (b) directly or indirectly, operate, conduct or promote participation in or membership of Gold Charity Fund Investments Ltd,
- (c) operate any marketing program that:
  - (i) directly pays any compensation related to recruitment based on false or misleading representations to consumers and/or
  - (ii) pays any compensation related to the purchase or sale of products based on false or misleading representations to consumers and/or
  - (iii) is based on a so-called multi-level marketing plan and/or
  - (iv) is based on the principle that participants are required to sell two products to two other participants who are in turn each required to sell to two further participants and where these sales occur in so-called right and left legs wherein the sales must be in a particular ratio before monetary rewards are paid.

**PROF T A WOKER**  
**VICE-CHAIRPERSON: CONSUMERS AFFAIRS COMMITTEE**

(<sup>1</sup>) See section 11. "The response of Gold Charity to the letter of the Committee dated 21 June 2001".

**NOTICE 2933 OF 2002****CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988**

I, Alexander Erwin, Minister of Trade and Industry, after having considered a report by the Consumer Affairs Committee in relation to an investigation of which notice was given in Notice 1905 of 2001 published in Government Gazette No. 22600 of 22 August 2001, which report was published in Notice No. 2932 in Government Gazette No. 24055 of 8 November 2002, and being of the opinion that an unfair business practice exists which is not justified in the public interest, do hereby exercise my powers in terms of section 12(l)(b) 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 -

"unfair business practice" means the business practice whereby the parties

- (a) invite, procure the attendance or attempt to invite or to procure the attendance of any person to a meeting, at which meeting such persons are invited or encouraged in any way, directly and indirectly, to partake in or become members of Gold Charity Fund Investments Ltd,
- (b) directly or indirectly, operate, conduct or promote participation in or membership of Gold Charity Fund Investments Ltd,

- (c) operate any marketing program that:
- (i) directly pays any compensation related to recruitment based on false or misleading representations to consumers and/or
  - (ii) pays any compensation related to the purchase or sale of products based on false or misleading representations to consumers and/or
  - (iii) is based on a so-called multi-level marketing plan and/or
  - (iv) is based on the principle that participants are required to sell two products to two other participants who are in turn each required to sell to two further participants and where these sales occur in so-called right and left legs wherein the sales must be in a particular ratio before monetary rewards are paid.

"the parties" means Gold Charity Fund Investments Ltd, CM Walker, NF Lotterie and T Mahlasela.

1. The unfair business practice is hereby declared unlawful in respect of the parties.
  2. The parties are hereby directed to -
    - (a) refrain from applying the unfair business practice;
    - (b) cease to have any interest in a business or type of business which applies the unfair business practice or to derive any income therefrom; and
    - (c) refrain from at any time applying the unfair business practice.
  3. This notice shall come into operation upon the date of publication hereof.
-

# IMPORTANT NOTICE

The  
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**Government Printer in Pretoria**  
as from 2nd January 2002

## NEW PARTICULARS ARE AS FOLLOWS:

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Pretoria

### Postal address:

Private Bag X85  
Pretoria  
0001

**New contact persons:** Awie van Zyl Tel.: (012) 334-4523  
Mrs H. Wolmarans Tel.: (012) 334-4591

**Fax number:** (012) 323-8805

**E-mail address:** awvanzyl@print.pwv.gov.za

### Contact persons for subscribers:

Mrs S. M. Milanzi Tel.: (012) 334-4734  
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**HENNIE MALAN**

Director: Financial Management  
Office of the Premier (Gauteng)



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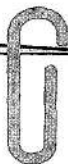
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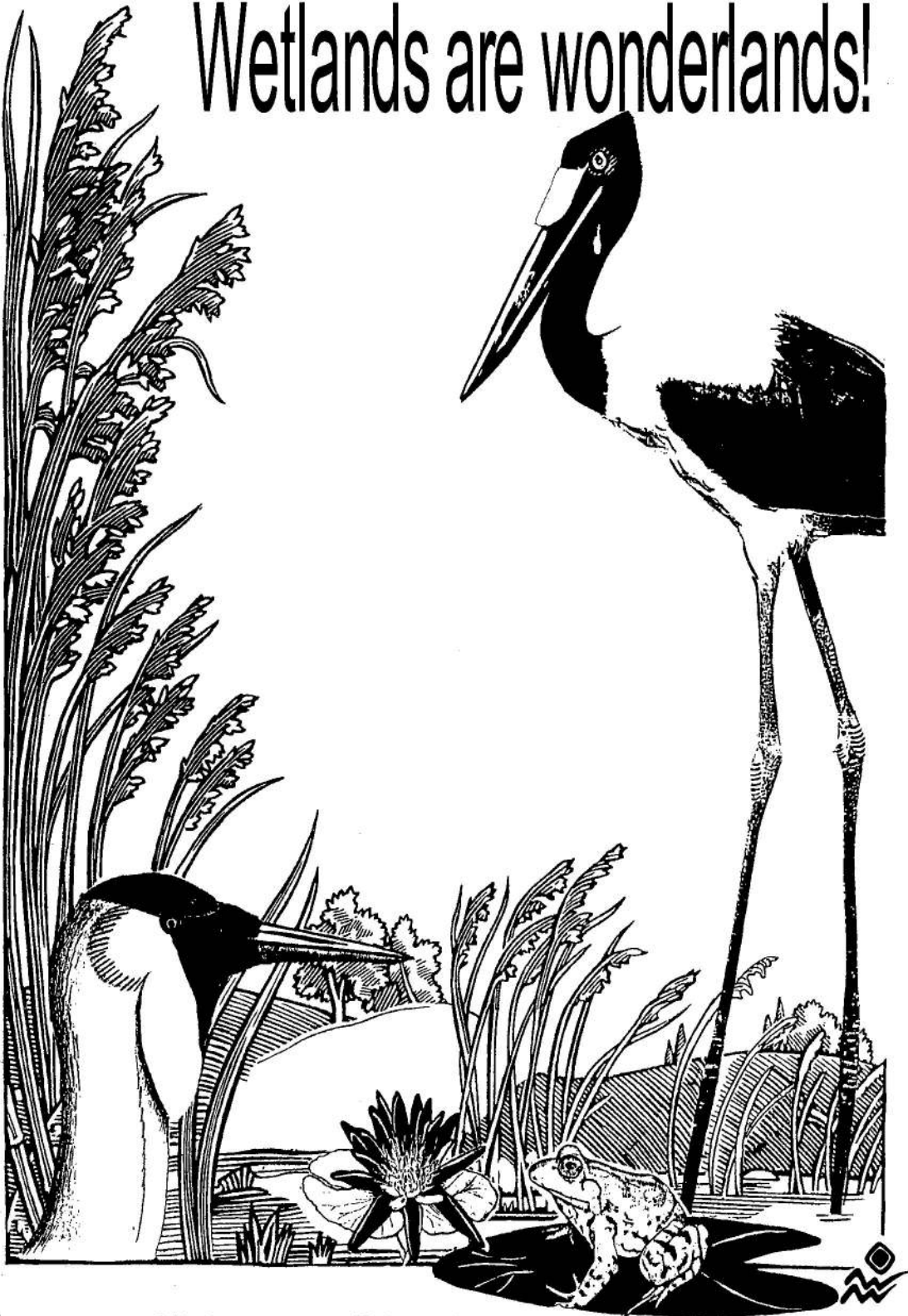
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