

NO. 71 OF 1996: STOCK EXCHANGES CONTROL AMENDMENT ACT, 1996.

PRESIDENT'S OFFICE

No. 1871.
20 November 1996

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

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To amend the Stock Exchanges Control Act, 1985, so as to insert, amend or delete certain definitions; to further regulate the juristic personality of a stock exchange; to make further provision for the separation of funds of members and other persons; to further regulate the board for the hearing of appeals; to make further provision for the sale of securities otherwise than by means of a bear sale; to provide for the establishment and maintenance of more than one guarantee fund; to further regulate the alienation of securities; to further regulate advertising and canvassing relating to securities; to make further provision for the appointment of an auditor and for accounting records and audit; to make further provision for inspections; to further regulate certain provisions relating to penalties; to further regulate limitation of liability; and to effect certain technical amendments to the text; to amend the Stock Exchanges Control Amendment Act, 1995, so as to further regulate restrictions on managing investments; and to provide for matters connected therewith.

(Afrikaans text signed by the President.)

(Assented to 6 November 1996)

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

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

1. Section 1 of the Stock Exchanges Control Act, 1985 (hereinafter referred to as the principal Act), is hereby amended-

(a) by the substitution in subsection (1) for the definition of "listed securities" of the following definition:

" 'listed securities' means securities included in the list of securities kept by the committee of a licensed stock exchange in terms of section 16(a);"; and

(b) by the substitution in subsection (1) for paragraph (iii) of the definition of "securities" of the following paragraph:

"(iii) bankers' acceptances, negotiable certificates of deposit issued by a banking institution bank registered under the Banks Act, 1965 (Act No. 23 of 1965) 1990 (Act No. 94 of 1990), or by a mutual building society mutual bank registered under the Mutual Building Societies Act, 1965 (Act No. 24 of 1965), or by a building society registered in terms

of

the Building Societies Act, 1986 (Act No. 82 of 1986) Mutual Banks Act, 1993 (Act No. 124 of 1993), or any other similar short-term instruments designated by the Registrar by notice in the Gazette, or options on or rights to such acceptances, certificates or instruments;"

Amendment of section 11 of Act 1 of 1985, as amended by section 16 of Act 50 of 1986 and section 10 of Act 54 of 1995

2. Section 11 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) A stock exchange shall as from the date on which it is licensed for the first time be a juristic person capable of suing or being sued in the name in which it is licensed, and of

acquiring,

owning, hiring, letting and alienating property, and, subject to the provisions of this Act, of doing such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions in terms of its rules."

Amendment of section 11A of Act 1 of 1985, as inserted by section 11 of Act 54 of 1995

3. Section 11A of the principal Act is hereby amended by the substitution in subsection (2) for the words following upon paragraph (d) of the following words:

"resolve to distribute such surplus assets to members, past members and or persons who were stock-brokers prior to the commencement of the Stock Exchanges Control Amendment Act, 1995 (Act No. 54 of 1995), whether upon a restructuring of such stock exchange or otherwise."

Amendment of section 14 of Act 1 of 1985, as substituted by section 14 of Act 54 of 1995

4. Section 14 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding the proviso of the following words:

"Every member who has one or more clients shall-

- (a) open and maintain a separate trust account at a bank; or
- (b) utilise a separate trust account at a bank, opened and maintained by the stock exchange to which the member belongs, and shall on the date of receipt of any payment from or on behalf of a person client deposit in such account either the account in question the cheque, draft or instrument by means of which such payment is made or alternatively deposit for same day value in such account funds equal to the amount of such payment".

Amendment of section 17 of Act 1 of 1985, as amended by section 13 of Act 54 of 1991 and section 17 of Act 54 of 1995

5. Section 17 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) No removal, suspension or omission referred to in subsection (1) shall be effected by the committee on a ground in respect of which the issuer of the securities has not had an opportunity of making representations to the committee in support of the continued inclusion of the securities of or prices in the relevant list."

Amendment of section 21 of Act 1 of 1985, as amended by section 21 of Act 54 of 1995

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

"(7) The decision of a majority of the members of the board shall be the decision of the board, but the chairperson alone shall decide any question of law, and whether any matter constitutes a question of law or a question of fact."

Amendment of section 25 of Act 1 of 1985, as amended by section 17 of Act 54 of 1991 and section 26 of Act 54 of 1995

7. Section 25 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"If any person, other than a member, sells securities to a member and fails to deliver such securities to the member concerned within a period of seven business days or any other prescribed period or a period as provided for in the rules, the member shall on the next succeeding business day after the expiry of such period, or as soon thereafter as the committee may allow in a particular case-".

Substitution of section 30 of Act 1 of 1985, as amended by section 31 of Act 54 of 1995

8. The following section is hereby substituted for section 30 of the principal Act:

"Establishment and maintenance of guarantee fund or funds

30. (1) The committee shall establish and maintain, to the satisfaction of the Registrar, a fund one or more funds out of which any liability of a member, arising out of the business of buying and selling listed securities, shall be paid, up to an amount, for different categories of claims, specified in the rules referred to in subsection (3), if such member fails to discharge any such liability.

(2) Every member shall contribute to the fund or funds on such basis as may be determined in the rules referred to in subsection (3).

(3) The committee shall make rules to control the administration of the fund or funds, and such rules shall be approved by the Registrar after he or she has in his or her discretion added to or amended them, if necessary.

Substitution of section 37 of Act 1 of 1985, as substituted by section 34 of Act 54 of 1995

9. The following section is hereby substituted for section 37 of the principal Act:

"Restriction on alienation of securities

37. Subject to the provisions of sections 22(2), (3) and (4) and 23(2), no member shall alienate securities, whether listed or unlisted, which have

been deposited with him or her in terms of section 23, as security in respect of a loan unless the person who deposited the securities has before or after the deposit, authorised him or her thereto in writing."

Amendment of section 39 of Act 1 of 1985, as substituted by section 36 of Act 54 of 1995

10. Section 39 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) No person other than a member or an officer or employee of a member,
who is so permitted in terms of the rules, or a stock exchange or an employee of a stock exchange, shall in any matter or by any means, either for himself, herself or for any other person, directly or indirectly advertise or canvass for any business relating to the buying and selling of listed securities."

Amendment of section 42 of Act 1 of 1985, as substituted by section 38 of Act 54 of 1995

11. Section 42 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Every member and stock exchange shall appoint an auditor registered as an accountant and auditor under the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), who engages in public practice as contemplated in that Act and who has no direct or indirect financial interest in the business carried on by such the member concerned or stock exchange in question."

Amendment of section 43 of Act 1 of 1985, as substituted by section 39 of Act 54 of 1995

12. Section 43 of the principal Act is hereby amended-

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"Every member and stock exchange shall-"; and

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

after
"(c) cause such records to be audited, not later than three months the financial year end of such member or stock exchange, or such later date as the Registrar may allow, by an auditor whose appointment has been approved by the Registrar in terms of section 42. "

Amendment of section 45 of Act 1 of 1985, as amended by section 41 of Act 54 of 1995

13. Section 45 of the principal Act is hereby amended-

(a) by the deletion in subsection (1) of the word "and" at the end of subparagraph (iii) of paragraph (a), the addition of the word "and" at the end of paragraph (b) and the addition to the said subsection of the following paragraph:

"(c) any other person who the Registrar has reason to believe is contravening or has contravened any provision of this Act."; and

(b) by the substitution for paragraphs (b) and (c) of subsection (2) of the following paragraphs, respectively:

"(b) the proviso to section 8(1) thereof shall be construed as if the following further proviso paragraph had been added at the end thereof:

'(c) (e) the registrar shall communicate to the committee or the official responsible for surveillance of the business carried on by a stock exchange any relevant information pertaining to the affairs of a member or past member of that stock exchange obtained by the registrar in the course of an inspection under this Act, or from a report by an inspector on such an inspection.'

(c) the any stock exchange, member, or an officer or employee of a member or other person referred to in paragraphs (a) and (b) subsection (1) shall be deemed to be a financial institution, and the registrar shall be the Registrar of such stock exchange, member or person to be the registrar defined in section 1 of the Inspection of Financial Institutions Act, 1984."

Amendment of section 48 of Act 1 of 1985, as substituted by section 45 of Act 54 of 1995

14. Section 48 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

"(2) (a) If any person intentionally or negligently fails to submit to the Registrar or to furnish the Registrar with any record, return, statement, report or other document or information in accordance with a requirement of this Act within the period determined by or under this Act, the Registrar may impose upon him or her by way of a notice in writing a fine not exceeding the prescribed amount for every day during which such failure continues: Provided that the Registrar may not impose any such fine

before the person to be fined has been afforded an opportunity of making representations in writing to the Registrar setting out the reason for the failure to submit or to furnish such record, return, statement, report or other documentation or information.

(b) A fine imposed under paragraph (a) shall be paid to the Registrar within such period as may be specified in the notice, and if the person concerned fails to pay the fine within the specified period the Registrar may by way of civil action in a competent court recover from such person the amount of the fine or any portion thereof which the Registrar may in the circumstances consider justified."

Substitution of section 52A of Act 1 of 1985, as inserted by section 49 of Act 54 of 1995

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

"Limitation of liability

52A. (1) No executive officer, employee or representative of a stock exchange or clearing house, or any member of a committee or subcommittee of the committee, shall be liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by the executive officer, employee, representative or member in the bona fide or negligent, but not grossly negligent, exercise of any power or the carrying out of any duty or performance of any function under or in terms of this Act or

the rules.

(2) For the purposes of this section, 'bona fide' shall include 'negligent' but not 'grossly negligent', 'wilful' or 'dishonest'.

Substitution of section 54 of Act 1 of 1985

16. The following section is hereby substituted in the Afrikaans text for section 54 of the principal Act:

"Kort titel

54. Hierdie Wet heet die Wet op Beheer van Effektebeurse Aandelebeurse, 1985."

Substitution of certain words in Act 1 of 1985

17. The principal Act is hereby amended by the substitution in the Afrikaans text for the words "effekte", "effektebeurs", "effektebeurse", "effektebeursaangeleenthede", "effektebeurslisensie", "effektebeurslisensies", "effektemakelaar" and "effektemakelaars", wherever they occur, of the words "aandele", "aandelebeurs", "aandelebeurse", "aandelebeursaangeleenthede", "aandelebeurslisensie", "aandelebeurslisensies", "aandelemakelaar" and "aandelemakelaars", respectively.

Substitution of section 4 of Act 54 of 1995

18. The following section is hereby substituted for section 4 of the Stock Exchanges Control Amendment Act, 1995:

"Substitution of section 4 of Act 1 of 1985, as amended by section 9 of Act 7 of 1993 and section 57 of Act 104 of 1993

4. The following section is hereby substituted for section 4 of the principal Act:

'Restrictions on managing investments

4. (1) No person shall, as a regular feature of his or her business, manage undertake the management of investments on behalf of another person, and for such management receive any remuneration in whatever form, other than fees charged by a member for the buying and selling of securities, unless he or she-

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

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

(c) complies with such conditions as the Registrar may from time to time determine by notice in the Gazette.

(2) The provisions of section 14 shall apply mutatis mutandis to any person approved in terms of subsection (1).

(3) Every application for approval referred to in subsection (1) shall be made in the prescribed manner and shall be accompanied by the prescribed application fee.

(4) The Registrar may grant an applicant the approval referred to in

subsection (1) if-

- (a) the applicant is of good character and integrity, or in the case of a corporate body, is managed and controlled by persons who are of good character and integrity;
- (b) the applicant complies, or in the case of a corporate body is managed by persons or employs persons who comply, with the standards of training and experience and other qualifications required by the Registrar by notice in the Gazette;
- (c) the applicant complies with the capital adequacy standards prudential requirements determined by the Registrar by notice in the Gazette;
- (d) the applicant has made adequate arrangements for the safe custody of securities; and
- (e) the applicant undertakes to pay the prescribed annual levy prescribed under section 15A of the Financial Services Board Act, 1990 (Act No. 97 of 1990).

(5) The Registrar may withdraw approval granted in terms of subsection (4) if the approved person fails to comply with the requirements contemplated in subsections (1) and (4).

(6) (a) For the purposes of subsection (1) it shall be deemed that the managing management of investments is not a regular feature of the business of any person if such investments form part of the assets-

- (i) in any deceased or insolvent estate, and he or she is the executor, administrator or trustee concerned or is a person administering or winding up such estate on behalf of that executor, administrator or trustee; or
- (ii) of any person under curatorship, and he or she is the curator concerned or is administering such estate on behalf of that curator; or
- (iii) of a company in liquidation or under judicial management, and he or she is the liquidator or judicial manager concerned or a person liquidating or managing such company on behalf of that liquidator or judicial manager; or
- (iv) of a trust inter vivos, and he or she is the trustee concerned or administering such trust on behalf of that trustee; or
- (v) of a minor, and he or she is the guardian concerned or a person administering such investments on behalf of that guardian.

(b) If in any instance contemplated in paragraph (a) it is a regular feature of the business of a person acting on behalf of such executor, administrator, trustee, curator, liquidator, judicial manager or guardian

to

manage investments, such person shall obtain approval from the Registrar in terms of subsection (1).

(7) For the purposes of this section-

(a) 'investments' means securities, whether listed or unlisted, or any other instruments declared to be such by the Registrar by notice in the Gazette, or funds intended for the purpose of buying such securities or instruments;

(b) 'management of investments'-

(i) in the case of a member, means the buying and selling of listed or unlisted securities on behalf of another person in terms of an unlimited mandate to act on behalf of such other person; or

(ii) in the case of a person who is not a member, means the buying and selling of listed or unlisted securities on behalf of another

person

in terms of any mandate whether limited or unlimited, to act on behalf of such other person; and

(c) 'an unlimited mandate' means a mandate to act on behalf of another person without it being necessary to obtain further authority or consent from such other person to effect any transaction in securities under such mandate.'

Short title

19. This Act shall be called the Stock Exchanges Control Amendment Act, 1996.