PRESIDENT'S OFFICE

No. 1518.
4 October 1995

NO. 55 OF 1995: FINANCIAL MARKETS CONTROL AMENDMENT ACT, 1995.

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

GENERAL EXPLANATORY NOTE:

** ** Words between asterisks indicate omissions from existing enactments.

<< >> Words between pointed brackets indicate insertions in existing enactments.

ACT

To amend the Financial Markets Control Act, 1989, so as to amend a definition and insert a new definition; to make new provision for the management of investments; to improve the provisions with respect to the restriction on the use of a name or description implying a connection with a financial exchange; to amend the provisions relating to the issue or renewal of financial market licenses; to make new provision for the delegation of functions by the executive committee of a financial exchange and for the listing of financial instruments; to amend and improve the provisions relating to the rules of a financial exchange; to make new provision relating to the separation of property and funds received from other persons by a clearing house and members of financial exchanges; to amend the provisions relating to the constitution of the board for hearing appeals; to make new provision with respect to the right of appeal against acts of an executive committee, and undesirable advertising or canvassing relating to financial instruments; to extend the provisions relating to inspections in regard to certain unlicensed or non-approved persons or businesses; to extend the powers of the Registrar of Financial Markets to attend certain meetings; to make new provision for the disclosure of certain information by financial exchanges; to extend the powers of courts to declare certain persons disqualified in regard to certain activities regulated by the said Act; to delete the provision for certain maximum fines; to extend the powers of the Minister of Finance to make regulations; and to provide for certain limitations of liabilities; and to make provision for incidental matters.

(Afrikaans text signed by the President.)
(Assented to 28 September 1995.)

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

Amendment of section 1 of Act 55 of 1989, as amended by section 29 of Act 97 of 1990, section 23 of Act 54 of 1991 and section 36 of Act 83 of 1992

1. Section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989) (hereinafter referred to as the principal Act), is hereby amended-

(a) by the substitution for the definition of "futures contract" of the following definition:

" 'futures contract' means a standardized contract the effect of which is that-

(a) a person agrees to deliver to or receive from another person a certain quantity of corporeal or incorporeal thing **before or**

on a future date at a pre-arranged price; or

(b) a person will pay to or receive from another person an amount of money **before or** on a future date according to whether the pre-arranged value or price of an asset, index as referred to in the definition of 'securities' in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), currency, rate of interest or any other factor is higher or lower **before or** on that future date than the pre-arranged value or price;"; and

(b) by the insertion after the definition of "option contract", of the following definition:

" <<'person' includes a partnership;>>".

Substitution of section 5 of Act 55 of 1989, as amended by section 15 of Act 7 of 1993 and section 64 of Act 104 of 1993

2. The following section is hereby substituted for section 5 of the principal Act:

"Restrictions on managing investments

5. <<(1) No person shall, as a regular feature of his business, manage 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 financial instruments, unless he-

(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 17B 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 contemplated 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 the other qualifications required by the Registrar by notice in the Gazette;

(c) the applicant complies with the capital adequacy requirements determined by the Registrar by notice in the Gazette;

(d) the applicant has made adequate arrangements for the safe custody of financial instruments; and

(e) the applicant undertakes to pay the prescribed annual levy.

(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 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 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;

(ii) of any person under curatorship, and he is the curator concerned or is administering such estate on behalf of that curator;

(iii) of a company in liquidation or under judicial management, and he is the liquidator or judicial manager concerned or is liquidating or managing such company on behalf of that liquidator or judicial manager;

(iv) of a trust inter vivos, and he is the trustee concerned or a person administering such trust on behalf of that trustee; or

(v) of a minor, and he 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 financial instruments or any other instruments declared to be such by the Registrar by notice in the Gazette, or funds intended for the purchase of such financial or other instruments;

(b) 'management of investments'-

(i) in the case of a member, means the buying and selling of financial instruments 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 financial instruments on behalf of another person in terms of any mandate, whether limited or unlimited, to act on behalf of the other person; and

(c) '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 financial instruments under such mandate>>.".

Substitution of section 6 of Act 55 of 1989

3. The following section is hereby substituted for section 6 of the principal Act:

"Restriction on use of name or description implying connection with

financial exchange

6. No person shall apply to any company, body, firm, business or undertaking a name or description signifying or implying some connection between the company, body, firm, business or undertaking and a financial exchange <<in the Republic when in fact no such connection exists>> **unless such person is a member of such an exchange or has obtained the prior written approval of the Registrar in the prescribed manner and on payment of the prescribed fee**.".

Substitution of section 7 of Act 55 of 1989, as amended by section 16 of Act 7 of 1993

4. The following section is hereby substituted for section 7 of the principal Act:

"Application for issue or renewal of financial market licence

7. (1) Notwithstanding <<the provisions of>> section 30 of the Companies Act, 1973 (Act No. 61 of 1973), **two** <<ten or more>> persons **or more** may form an association to carry on the business of a financial market, and the association may apply to the Registrar **for a certificate authorizing a receiver of revenue** to issue to the association a financial market licence or to renew any such licence **: Provided that for the purposes of this subsection a partnership shall be deemed to be one person**.

(2) Every application relating to the issue or renewal of a financial market licence shall-

<<(a)>> be made in the prescribed manner; and

<<(b)>> **shall** be accompanied by the prescribed <<application>> fee; and

<<(c)>> in the case of an application in respect of the issue of any such licence, **shall** also <<be accompanied>> by **not fewer than** five copies of the proposed rules.

<<(3) The Registrar shall advertise every application for the issue of a financial market licence in two national newspapers in any two official languages (one of which shall be English), at the expense of the applicant.

(4) The advertisement shall state-

(a) the name of the applicant;

(b) the place where the rules of the applicant will be available for inspection by any member of the public; and

(c) the period within which any objections to the issue of the licence may be lodged with the Registrar>>.".

Substitution of section 8 of Act 55 of 1989, as amended by section 17 of Act 7 of 1993

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

"Issue of financial market licence

8. (1) <<On expiry of the period contemplated in section 7(4)(c)>>, the Registrar may **grant**, <<after consideration of any objection

lodged with him in terms of the said section, issue to>> the association referred to in section 7(1) **a certificate authorizing a receiver of revenue to issue to the association** a financial market licence, if **the Registrar is satisfied that**-

(a) the association has sufficient financial resources for the proper exercise or carrying out of the powers and duties conferred upon or assigned to a financial exchange by or under this Act;

(b) the proposed rules comply with the requirements of this Act;

(c) the interests of the public would be served by the issue of the licence; and

(d) <<the association comprises at least ten>> members <<who>> will carry on business as buyers and sellers of listed financial instruments, independently of one another and in competition with one another.

(2) **Such certificate** <<The financial market licence>> shall specify the place at which or the <<trading method or>> facility by means of which the business of the financial market may be carried on, and that business shall not be carried on at any other place or in any other manner without the prior approval of the Registrar.

(3) A certificate for the issue or renewal of a financial market licence shall be granted on payment of the prescribed fee.".

Substitution of section 9 of Act 55 of 1989

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

"Financial market licence

9. (1) **A financial market licence shall, subject to subsections (3) and (4), be issued by the receiver of revenue of the district in which the head office of the financial exchange concerned is situated.

(2) Any such** <<A financial market>> licence shall expire on 31 December of the year for which it is issued, but may **, subject to subsections (3) and (4),** be renewed from year to year.

**(3) No such licence shall be issued or renewed except in pursuance of a certificate by the Registrar authorizing its issue or renewal, as the case may be.

(4)** <<(2)>> **A** <<The prescribed>> licence fee **as prescribed** shall be payable in respect of the issue or renewal of any such <<financial market>> licence: Provided that if the liability in respect of the issue of such licence arises after 30 June in any year, one-half of that **amount** <<fee>> shall be payable for **its** <<such>> issue.".

Substitution of section 10 of Act 55 of 1989

7. The following section is hereby substituted for section 10 of the principal Act:

"Refusal of renewal of financial market licence

10. (1) The Registrar may refuse to **grant a certificate authorizing the renewal of** <<renew>> a financial market licence if-

(a) **he is satisfied that** during the year preceding the year for which the licence is to be renewed-

(i) the rules of the financial exchange concerned were not properly enforced;

(ii) the **financial exchange did not comply with any of the requirements referred to in** <<provisions of>> section 8(1)(a), (c) or (d) <<no longer applied to the financial market concerned>>;

(iii) the financial exchange <<concerned>> did not comply with any other provision of this Act; or

(iv) the financial exchange <<concerned>> did not comply with any <<written>> direction, request, condition or requirement of the Registrar <<in respect of which an appeal had been noted by the Registrar>> in terms of **any provisions of this Act** <<section 19(2) and upheld by the board referred to in section 18>>; or

(b) during the year preceding the year for which the licence is to be renewed the financial exchange failed to give effect to a decision of the board referred to in section 18.

(2) **No refusal of a certificate under subsection (1) shall be of force** <<The Registrar shall not refuse to renew a stock exchange licence on any grounds>> unless **the Registrar** <<he>> has **previously by notice in writing given the financial exchange** <<furnished the association>> concerned **an** <<with the reasons for his proposed refusal and the association has had the>> opportunity to show cause within a period specified in **the** <<a>> notice <<by the Registrar to the association>> why such **certificate** <<renewal>> should not be refused.".

Insertion of section 12A in Act 55 of 1989.

8. The following section is hereby inserted after section 12 of the principal Act:

"Funds of financial exchange

<<12A. (1) The executive committee may require members to contribute towards the funds of the financial exchange as a contribution towards carrying on the business of such financial exchange.

(2) Notwithstanding the provisions of any law or the common law and without affecting its status as a non-proprietary financial exchange, the executive committee may-

(a) if such financial exchange has assets which are surplus to its requirements;

(b) after making appropriate and proper provision for any liabilities of such financial exchange;

(c) with the approval of its members in terms of the constitution of such financial exchange; and

(d) with the written consent of the Registrar, resolve to distribute such surplus assets to members or past members, whether upon a restructuring of such financial exchange or otherwise.

(3) A financial exchange which ceases to be licensed, shall be dissolved in terms of its rules>>.".

Substitution of section 13 of Act 55 of 1989

9. The following section is hereby substituted for section 13 of the principal Act:

"Delegation of functions of executive committee

13. **An**<<The>> executive committee **of a financial exchange** may-

<<(a)>> subject to such conditions as it may determine, delegate or assign any power or duty conferred upon or assigned to it by or under this Act, **excluding the punishment of a member under the rules of the financial exchange in question and the powers conferred by section 15,** to a subcommittee or such person as it deems fit, but shall not thereby be divested or relieved of a power or duty so delegated or assigned<<; or

(b) delegate to a disciplinary tribunal to be established in terms of the rules the power to hear and adjudicate any complaint or charge against a member or an officer or employee of a member and, where such tribunal deems it appropriate, to impose any penalty>>. ".

Substitution of section 14 of Act 55 of 1989

10. The following section is hereby substituted for section 14 of the principal Act:

"List of financial instruments

14. An executive committee **of a financial exchange** shall keep a list, approved by the Registrar, of the financial instruments which may be dealt in on the financial **market** <<exchange>> in question and shall, subject to section 15(3), not permit dealings on the **market** <<financial exchange>> in financial instruments not included in the list.".

Amendment of section 15 of Act 55 of 1989, as amended by section 24 of Act 54 of 1991 and section 37 of Act 83 of 1992

11. Section 15 of the principal Act is hereby amended by the deletion of subsection (4).

Amendment of section 17 of Act 55 of 1989, as amended by section 25 of Act 54 of 1991, section 18 of Act 7 of 1993 and section 65 of Act 104 of 1993

12. Section 17 of the principal Act is hereby amended-

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

(a) <<(i) that its affairs are managed by a committee and shall make provision>> for the establishment, composition and functions of an executive committee of the financial exchange;

<<(ii) that adequate provision is made for the implementation of section 12A;

(iii) that no person is admitted as a member or allowed to continue as a member unless he-

(aa) 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;

(bb) complies, or in the case of a corporate body is managed by or employs persons who comply, with the standards of training and experience and other qualifications required in terms of the rules; and

(cc) employs the number of brokers required in terms of the rules>>;";

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

(b) for-

<<(i)>> the manner in which and <<the terms and>> conditions under which members are to deal in **listed** financial instruments; <<and

(ii) the adequate disclosure of information, relating to members' dealings with buyers and sellers of financial instruments to such buyers and sellers,>>

so as to ensure efficiency, honesty and fair practice in relation to such **dealing** <<dealings>>;";

(c) by the insertion after paragraph (b) of subsection (1) of the following paragraphs:

" <<(bA) for the delivery and for settlement and for ancillary matters;

(bB) for the circumstances under which and the conditions on which a member may grant credit to any person>>;"-,

(d) by the insertion after paragraph (d) of subsection (1) of the following paragraphs:

<<(dA) (i) that no officer or employee of a member may advise on or conclude any transaction on behalf of such member in the course of that member's business in relation to the buying and selling of financial instruments, unless authorised to do so in terms of the rules;

(ii) that no member may employ any person unless such person has entered into a written agreement with the member in terms of which the person agrees to comply with the provisions of the Act, the rules, the directives and code of conduct of the financial exchange concerned;

(dB) that members are obliged to ensure that buyers and sellers of financial instruments are aware of such buyers' and sellers' material obligations in terms of the Act and the rules;

(dC) that no member may carry on the business referred to in section 5 of this Act unless such member is authorised to do so in terms of the rules and complies with the provisions of that section>>. ";

(e) by the substitution for paragraph (g) of subsection (1) of the following paragraph:

"<<(g)(i) that complaints against any member or officer or employee of a member are adequately investigated;

(ii) that adequate steps are taken for the investigation and discipline of any member or officer or employee of a member who contravenes or fails to comply with the provisions of this Act or the rules;

(iii) that a member shall not be directed to terminate the employment of an officer or employee on any grounds in respect of which that officer or employee has not had an opportunity of making representations to the committee or disciplinary tribunal contemplated in section 13(b) which made the decision;

(iv) that any officer or employee who has made representations as contemplated in subparagraph (iii) and paragraph (l)(ii), shall be entitled to be supplied with a copy of a record of the relevant proceedings of the meeting to which that member, officer or employee made such representations; and

(v) that the committee or the disciplinary tribunal contemplated in section 13(b), as the case may be, may, upon good cause shown and subject to such conditions as it may impose, modify or vary any sentence which it may previously have imposed upon any person provided that in modifying or varying such sentence, the committee or such tribunal shall under no circumstances increase such sentence>>;":

(f) by the substitution for paragraph (i) of subsection (1) of the following paragraph:

(i) for the effective monitoring of compliance with, and enforcement of, the rules and any arrangements made by the financial exchange with a recognized clearing house for the provision of services and facilities in respect of the buying and selling of financial instruments on the financial market in question <<and for the clearing, netting or settlement of transactions>>.";

(g) by the substitution for subparagraph (i) of paragraph (l) of subsection (1) of the following subparagraph:

"(i) for **an appropriate mechanism** <<a procedure>> whereby a person who has been punished by an executive committee<<, or the disciplinary tribunal contemplated in section 13(b),>> otherwise than by way of termination of his membership of the financial exchange, may appeal against the decision in question;";

(h) by the insertion after paragraph (l) of subsection (1) of the following paragraphs:

"<<(lA) (i) that adequate capital or guarantees be required from members for all their activities;

(ii) that no person be admitted as or allowed to continue to be a member unless at the time of such person's admission and thereafter while such person remains a member he complies with the capital or guarantee requirements in terms of the rules;

(iii) that the capital or guarantee requirements of members are reviewed regularly in order to ensure that the risk exposures of a member are adequately covered; or

(iv) for different capital or guarantee requirements for different categories of members or for the different activities of a member's business;

(lB) that no member may effect a transaction in financial instruments with a person who such member reasonably believes requires approval in terms of section 5, without having taken reasonable measures to ascertain that such person has the necessary approval;

(lC) that trading in any financial instrument may be halted for such period as the executive committee may deem necessary in the public interest or for the purposes of market stability;>>";

(i) by the substitution for paragraph (m) of subsection (1) of the following paragraph:

"(m) that a member shall provide sureties or security to the satisfaction of the executive committee, for the discharge **after he has been excused,** of his liabilities arising out of dealings in **listed** financial instruments;";

(j) by the substitution for paragraph (n) of subsection (1) of the following paragraph:

"<<(n) that a fund shall be established and maintained whether by levies on transactions or otherwise for the discharge, up to a maximum amount as provided for in the rules, of outstanding liabilities of a member arising out of dealings in financial instruments;>>";

(k) by the addition after paragraph (x) of subsection (1) of the following paragraphs:

"<<(xA) that adequate provision is made for the operation of the trust account referred to in section 17B and for the circumstances under which funds shall be paid into and withdrawn from such trust account;

(xB) that provision is made for the manner in which a financial exchange shall be dissolved or restructured; and

(xC) generally, that the business of the member and the financial exchange is carried on with due regard to the public interest>>. ";

(l) by the substitution for subsection (3) of the following subsection:

"(3) <<(a) The Registrar shall as soon as possible after granting a financial market licence, cause the rules of the financial exchange concerned to be published in the Gazette in English and any other official language at the expense of the financial exchange concerned.

(b) No addition to, amendment or rescission (other than a suspension) of the rules shall be valid, unless-

(i) the prescribed fee has been paid;

(ii) it has been approved by the Registrar in writing; and

(iii) a date has been stipulated in the Registrar's approval

for the coming into operation of such addition, amendment or rescission.

(c) The Registrar shall, after considering any objection as contemplated in paragraph (f), approve or disapprove an addition, amendment or rescission referred to in paragraph (b) within a period of two months after expiry of the period referred to in paragraph (f).

(d) If the Registrar does not disapprove of an addition, amendment or rescission referred to in paragraph (b) within a period of two months after expiry of the period referred to in paragraph (f), the Registrar shall be deemed to have approved thereof and such addition, amendment or rescission shall come into operation on the day immediately following upon the date of expiry of the aforesaid period of two months.

(e) Upon receipt of an application for approval in terms of paragraph (b), the Registrar shall cause to be published at the expense of the financial exchange in English and any other official language in the Gazette a notice setting forth the proposed addition, amendment or rescission.

(f) The said notice shall call upon all interested persons (other than members of the financial exchange concerned) who have any objection to the proposed addition, amendment or rescission to lodge their objection with the Registrar within a period of 30 days <<from the date of publication of the notice in the Gazette>>.

(m) by the substitution for subsection (4) of the following subsection:

"(4) Whenever **the Registrar deems it desirable, he** <<it is in the public interest, the Registrar>> may, after consultation with the executive committee **concerned** and with the consent of the Minister, **in the prescribed manner** <<by notice in the Gazette>> **amend,** add to<<, amend>> or rescind the rules of the financial exchange concerned <<with effect from the date immediately following upon the date of publication of the notice or such later date as may be specified therein>>.";

(n) by the substitution for subsection (5) of the following subsection:

"(5) (a) Subject to the prior approval of the Registrar, **an** <<the>> executive committee may suspend any of the rules of the financial exchange concerned for a period not exceeding 30 days at a time <<after notice of such proposed suspension has been advertised in the Gazette>>. **and**

<<(b) The Registrar>> may **during** <<for the period of>> such suspension **by resolution** issue **a directive** <<an interim rule in terms of subsection (4)>> to regulate the matter in question until such time as an appropriate amendment to the rules can be made in terms of this section.

(b) <<(c)>> Any contravention of or non-compliance with **a directive** <<an interim rule>> shall mutatis mutandis have the same legal effect as a contravention of or non-compliance with a rule."; and

(o) by the insertion after subsection (5) of the following subsections:

"<<(6) The provisions of any rule made under this section shall be binding on all members and on all officers or employees of members and on every person utilising the services of a member or who concludes a transaction with a member in the course of that member's business.

(7) (a) A rule may, in respect of each contravention thereof by a member or an officer or employee of a member, prescribe one or more of the following penalties:

(i) A reprimand;

(ii) censure;

(iii) a fine not exceeding R1000000, which amount shall be payable to the fund referred to in paragraph (n) of subsection (1);

(iv) suspension;

(v) termination of membership; or

(vi) a direction to a member to terminate the employment of an officer or employee.

(b) The rule contemplated in paragraph (a) may also prescribe that full particulars regarding the imposition of a penalty shall be published and that any person convicted under that paragraph may be ordered to pay the costs incurred in the investigation or hearing in question.>>".

Substitution of section 17A of Act 55 of 1989, as inserted by section 26 of Act 54 of 1991

13. The following section is hereby substituted for section 17A of the principal Act:

"Status of assets given to or received by clearing house in trust

17A. For the purposes of a claim against a clearing house **or member of a financial exchange** with regard to dealings in financial instruments there shall be excluded from the assets of the clearing house **or member** concerned-

(a) money;

(b) financial instruments; and

(c) other corporeal or incorporeal things distinguishable from the assets of that clearing house **or member**,

given by any person <<in trust>> to that clearing house **or member**, or received by that clearing house **or member on behalf of any person** <<in trust>>.".

Insertion of section 17B in Act 55 of 1989

14. The following section is hereby inserted after section 17A of the principal Act:

"Separation of funds of members and other persons

<<17B. (1) Every member shall open and maintain a separate trust

account at a bank and shall on the date of receipt of any payment from or on behalf of a person deposit in such account either 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: Provided that a deposit shall not be necessary if such payment-

(a) is made to a member by a buyer of listed financial instruments-

(i) against delivery of such financial instruments to the buyer; or

(ii) against such financial instruments being marked or recorded as the property of the buyer; or

(b) is preceded by a payment made by such member to a seller of listed financial instruments against delivery of such financial instruments to such member; or

(c) is made by a person to pay a debt due to the member: Provided that a debt arising from the purchase of listed financial instruments which has not been marked or recorded as the property of a buyer of listed financial instruments shall not be regarded as a debt due for this purpose; or

(d) is made in terms of any other law or the rules which specifically provide for such payment to be deposited into some other account.

(2) Funds held in the trust account and any such funds which have not been deposited into the trust account as envisaged in subsection (1) but which are identifiable as belonging to a specific person, shall be deemed to be 'trust property' as defined in the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984), and the provisions of the said Act shall, unless otherwise provided for in this section, apply to such funds.

(3) Funds deposited into the trust account of a member may only be withdrawn by such member for the purposes of making payment-

(a) to the person or member entitled to such payment; or

(b) in terms of any other law or the rules:

Provided that if after such withdrawal any deposited cheque, draft or other instrument against which such withdrawal was made is not subsequently honoured, the member shall pay the shortfall arising from such default into the trust account immediately.

(4) All bank charges accruing in respect of a trust account shall be for the account of the member concerned except for those bank charges specifically related to a deposit or withdrawal of the funds of any person which shall, in such case, be for such person's own account.

(5) Any interest accruing on the funds in a trust account shall accrue to and shall be payable to the person entitled to such funds after the amount of any administration fee or charge to which the member may be entitled in terms of the rules or any other law, has been deducted.

(6)(a) Notwithstanding any other law or the common law, an amount deposited or to be deposited in a trust account shall not under any circumstances form part of the assets of the member.

(b) Any excess remaining in the account after payment of or provision for all claims of persons whose funds have, or should have been deposited in such trust account, shall not be trust property as

referred to in subsection (2).

(7) The division of the Supreme Court of South Africa having jurisdiction over a member may, on application by the executive committee, the Registrar or by any other person having a financial interest in or claim against a trust account referred to in subsection (1), on good cause shown, prohibit such member from operating such account in any way and may appoint a curator to control and administer such trust account with such rights, duties and powers in relation thereto as the court may deem fit.>>".

Amendment of section 18 of Act 55 of 1989, as amended by section 66 of Act 104 of1993

15. Section 18 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The board shall consist of <<a judge who has been discharged from active service in terms of section 3 of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989), or>> an advocate <<of senior counsel status>> of one of the divisions of the Supreme Court of the Republic of not less than 10 years standing, who shall be the **chairman** <<chairperson>> of the board, an accountant in public practice registered as an accountant and auditor, under the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), of not less than 10 years' standing, and a person appointed by virtue of his knowledge of financial markets in the Republic.".

Substitution of section 19 of Act 55 of 1989, as amended by section 27 of Act 54 of 1991 and section 38 of Act 83 of 1992

16. The following section is hereby substituted for section 19 of the principal Act:

"Right of appeal against acts of executive committee

19.(1)(a) If **an** <<the>> executive committee-

(i) <<rejects an application for membership by any person;

(ii) or the disciplinary tribunal contemplated in section 13(b)>> terminates the membership of any person as a member **of the financial exchange concerned** <<or directs any member to terminate the employment of an officer or employee;

(iii) or the disciplinary tribunal contemplated in section 13(b) imposes any penalty on any member, officer or employee of a member>>;

(ii) (iv) under section 15(1)(a) removes financial instruments from, or suspends for a period which together with any suspension in terms of section 15 (1) (b) exceeds 30 days, the inclusion of listed financial instruments in the list referred to in section 14, or omits the price of financial instruments from a list of quotations of prices referred to in section 15(1)(a)(ii)<<; or

(v) grants an application in terms of section 14 for the inclusion of financial instruments in the list where the listing requirements of the financial exchange were not complied with in respect of those financial instruments or where the inclusion of the financial instruments in such list is not in the public interest,>> **such** <<an aggrieved>> person, <<member, officer or employee of a member>> or the person who issued the financial instrument <<or the Registrar>>, as the case may be, shall be

entitled to be furnished with the the **reason** <<reasons>> for the decision **in question** and may appeal against such decision to the board referred to in section 18, <<but, in the case of a person referred to in subparagraph (iii) only with the leave of the executive committee or the disciplinary tribunal contemplated in section 13(b)>>, and the board may confirm, vary or set aside the decision and, whether or not the appeal is withdrawn, make such award as to costs as the board may deem fit.

(b)(i) The board shall deal with an appeal on-

(aa) the circumstances which were considered in **coming to** <<making>> the decision appealed against in terms of paragraph (a);

(bb) the grounds of the appeal;

(cc) the documentary or oral evidence submitted or given by any person **(with or without legal representation)** at the request of or with the permission of the board; and

(dd) any other information at the disposal of the board.

(ii) The appellant shall, <<except if the appellant is the Registrar,>> within the period prescribed, lodge with the secretary of the board such sum of money as the chairman of the board may have determined, as security for the payment of any costs that may be awarded by the board against the appellant.

<<(2) The Registrar may, after he has requested the executive committee, in writing, either to review a decision which it has made or to make a decision which it has omitted to make or to take any action or to refrain from taking any particular action within a reasonable period, appeal to the board referred to in section 18 against any decision or action of the executive committee or any lack of decision or action by the executive committee and the provisions of subsection (1)(b)(ii) of this section shall apply mutatis mutandis.>>

(3) A decision of the board on an appeal shall for all purposes be deemed to be a decision of the executive committee.".

Insertion of section 21A in Act 55 of 1989

17. The following section is hereby inserted after section 21 of the principal Act:

"Undesirable advertising or canvassing in relation to financial instruments

<<21A. (1) No person other than a member or an officer or employee of a member who is so permitted in terms of the rules shall in any matter or by any means, either for himself or for any other person, directly or indirectly advertise or canvass for any business relating to the buying and selling of financial instruments.

(2) No person other than a person approved by the Registrar in terms of section 5(1) shall in any matter or by any means either for himself or for any other person, directly or indirectly advertise or canvass for business referred to in section 5(1).

(3) Notwithstanding anything to the contrary contained in any law, the Registrar may, if an advertisement, brochure or other document relating to financial instruments is misleading or for any reason objectionable, direct such person not to publish or to cease the

publication of the advertisement, brochure or document concerned or to effect such amendments as he may deem fit.>>".

Amendment of section 26 of Act 55 of 1989

18. Section 26 of the principal act is hereby amended-

(a) by the substitution for subsection (1) of the following subsection:

"<<(1) The provisions of the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984), shall apply mutatis mutandis to-

(a) (i) a financial exchange or the clearing house of such an exchange;

(ii) a member or an officer or employee of a member;

(iii) a person approved in terms of section 5 or an officer or employee of such a person; or

(b) (i) any person not licensed to carry on the business of a financial exchange;

(ii) a person who is not a member; or

(iii) a person not approved in terms of section 5 of this Act, but who is carrying on the business of a financial exchange, a member or person requiring approval in terms of section 5.>>";

(b) by the substitution for paragraph (b) of subsection (2) of the following paragraph:

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

'(e) the registrar shall **may in his or her discretion** communicate to the executive committee **of** <<or to the official responsible for surveillance of the business carried on by>> a financial exchange <<any relevant>> information <<pertaining to the affairs of a member or past member of that financial exchange>> obtained by him in the course of an inspection under this Act, or from a report by an inspector on <<such>> an inspection, **of the affairs of a person who is or was a member of that financial exchange**.' ";

(c) by the insertion after paragraph (b) of subsection (2) of the following paragraph:

"<<(c) such financial exchange, member or other person referred to in subsection (1) (a) and (b) shall be deemed to be a financial institution, and the Registrar as defined in section 1 shall be the registrar in respect of such financial exchange, member or person.>>"; and

(d) by the substitution for subsection (3) of the following subsection:

"(3) **An** <<The>> executive committee <<or the disciplinary tribunal contemplated in section 13(b)>> may in any disciplinary proceedings in terms of the rules **concerned against any member of the financial exchange in question,** take into consideration any relevant information furnished to the executive committee by virtue of <<the provisions of>> subsection (2)(b).".

Amendment of section 27 of Act 55 of 1989

19. Section 27 of the principal Act is hereby amended-

(a) by the substitution for subsection (1) of the following subsection:

"(1) The Registrar or a person nominated by him may attend any meeting-

<<(a)>> of an executive committee or a subcommittee of such a committee, and, <<except for voting,>> take part in all the proceedings at such meeting<<; or

(b) of any disciplinary tribunal contemplated in section 13(b) and may request an opportunity to be heard by such tribunal.>>"; and

(b) by the addition of the following subsection:

"<<(3) The provisions of subsection (2) shall be applicable mutatis mutandis to the chairperson of the disciplinary tribunal contemplated in section 13(b)>>.".

Substitution of section 28 of Act 55 of 1989

20. The following section is hereby substituted for section 28 of the principal Act:

"Furnishing of information to Registrar

28. The Registrar may by notice in writing require-

(a) a financial exchange or a member thereof;

(b) a recognized clearing house;

(c) **a** <<any>> person **who by virtue** <<approved in terms>> of section 5(1) **is entitled, as a regular feature of his business, to administer or hold in safe custody on behalf of any other person any investments in listed financial instruments or any investments of which listed financial instruments form part**; or

(d) any other person **in respect of whom the Registrar has reason to believe** <<who>> is carrying on business in contravention of section 4(1) or (2) or 5(1), to transmit or furnish to the Registrar within a period stated in the notice any document or information at the disposal of that financial exchange, member, clearing house or person relating to its or his affairs, and which the Registrar may <<reasonably>> require, and that <<financial>> exchange, member, clearing house or person shall comply with the relevant requirement of the Registrar to his satisfaction within the relevant period or within such further period as the Registrar may allow **on application before the lapse of the first-mentioned period**.".

Insertion of section 28A in Act 55 of 1989

21. The following section is hereby inserted after section 28 of the principal Act:

"Disclosure of information by financial exchange

<<28A. Notwithstanding the provisions of any other law a financial exchange may enter into an agreement with any other exchange, whether domestic or foreign, to disclose information relating to a particular transaction, a member, officer or employee of a member or a buyer and seller of financial instruments if such information will be of

importance to the relevant domestic or foreign exchange and that the disclosure will not be against the public interest.>>".

Amendment of section 29 of Act 55 of 1989

22. Section 29 of the principal Act is hereby amended-

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

(b) direct a financial exchange or a member thereof, or a recognized clearing house, or a person **who by virtue** <<approved in terms>> of section 5 **is entitled, as a regular feature of his business, to administer or hold in safe custody on behalf of any other person any investments in listed financial instruments or any investments of which listed financial instruments form part**, to take any other steps, or to refrain from performing or continuing any act, in order to terminate or obviate any undesirable practice or state of affairs brought to light by the inspection.";

(b) by the substitution for subsection (2) of the following subsection:

"(2) A financial exchange or a member thereof, or a recognized clearing house, or a person **who by virtue** <<approved in terms>> of section 5 **is entitled, as a regular feature of his business, to administer or hold in safe custody on behalf of any other person any investments in listed financial instruments or any investments of which listed financial instruments form part**, shall upon receipt of a request in writing by the Registrar to that effect immediately discontinue the publication or the issue of any advertisement, brochure, prospectus or similar document <<relating to financial instruments>> specified in the request which is **in the opinion of the Registrar** not a correct statement of fact or **not in the public interest** <<is objectionable>>, or effect such adjustments thereto as the Registrar may deem fit.".

Substitution of section 30 of Act 55 of 1989

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

"Evidence

30. A record purporting to have been made or kept in the ordinary course of the carrying on of the business of a financial exchange or <<the business>> of a member **thereof**, or <<of>> a recognized clearing house, or <<the business of>> a person **who by virtue** <<approved in terms>> of section 5 **is entitled as a regular feature of his business, to administer or hold in safe custody on behalf of any other person investments in listed financial instruments or any investments of which listed financial instruments form part,** or a copy of or an extract from such record certified to be correct by **an officer in the service of the State** <<the public prosecutor,>> shall on its mere production by the [State] prosecutor in any criminal proceedings under this Act, any other law or the common law against the person who carries or carried on the business in question or any other person, be admissible in evidence and be prima facie proof of the facts contained in such record, copy or extract. ".

Substitution of section 31 of Act 55 of 1989

24. The following section is hereby substituted for section 31 of the principal Act:

"Power of court to declare member or officer or employee of member or person approved in terms of section 5 disqualified

31. (1) If a court-

(a) convicts a member **of a financial exchange** <<or officer or employee of a member or a person approved in terms of section 5>> of an offence under this Act or of an offence of which any dishonest act or omission is an element; or

(b) finds, in proceedings to which a member **of a financial exchange** <<or officer or employee of a member or a person approved in terms of section 5 or such person's officer or employee>> is a party or in which **his** <<such member's, officer's, employee's or person's>> conduct is called in question, that **he** <<such member, officer, employee or person>> has been guilty of dishonest conduct, the court may (in addition, in a case referred to in paragraph (a), to any sentence it may impose) declare **the** <<that>> member<<, officer or employee of a member or person or such person's officer or employee>> **concerned** to be disqualified, for an indefinite period or for a period specified by the court, from carrying on the business of a member **of a financial exchange** <<or from being an officer or employee of a member or from carrying on the business referred to in section 5, as the case may be.>>

(2) The court may, on **good** <<sufficient>> cause shown, vary **or abrogate** a declaration made under subsection (1).

(3) The registrar or clerk of any court which has made any declaration under subsection (1) or varied any declaration under subsection (2), shall forthwith notify the Registrar and the executive committee **concerned thereof** <<of the financial exchange at which the member carries on business, or of which the officer or the employee of a member is employed, of that declaration or variation>>.

(4) No declaration made under subsection (1) **in respect of a member** shall affect any right on the part of the executive committee concerned to take disciplinary action against the member, <<or the officer or employee of a member, concerned.>>".

Amendment of section 36 of Act 55 of 1989, as amended by section 28 of Act 54 of 1991

25. Section 36 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Any person who-

(a) contravenes a provision of section 4(1), <<17B,>> 20, 21 or 22;

(b) contravenes a provision of section 6 or 24;

(c) contravenes a provision of section 4(2) or 5(1);

(d) refuses or fails to comply with any direction, request, requirement or condition of the Registrar in terms of any provision of this Act;

(e) carries on the business of a member **of a financial exchange** at any time when in terms of a declaration under section 31 he is disqualified from doing so,

shall be guilty of an offence and on conviction liable-

(i) in the case of an offence referred to in paragraph (a) or (e), to a fine **not exceeding R50 000** or to imprisonment for a period not exceeding five years, or to both that fine and that imprisonment;

(ii) in the case of an offence referred to in paragraph (b) or (d), to a fine **not exceeding R20 000** or to imprisonment for a period not exceeding two years, or to both that fine and that imprisonment; and

(iii) in the case of an offence referred to in paragraph (c), to a fine **not exceeding R10 000** or to imprisonment for a period not exceeding one year, or to both that fine and that imprisonment. ".

Amendment of section 37 of Act 55 of 1989, as amended by section 19 of Act 7 of 1993

26. Section 37 of the principal Act is hereby amended-

(a) by the deletion of paragraph (f)(iii) of subsection (1); and

(b) by the insertion after paragraph (gA) of subsection (1) of the following paragraph:

"<<(gB) the minimum capital which a member shall hold, what that capital may be comprised of and the basis of valuation of such capital;>>".

Insertion of section 37A in Act 55 of 1989

27. The principal Act is hereby amended by the insertion after section 37 of the following section:

"Limitation of liability

<<37A. (1) No executive officer, employee or representative of a financial exchange or of a clearing house, or any member of an executive committee or subcommittee of the executive committee, or of a clearing house, shall be liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by the officer, employee, representative or member in a bona fide exercise of any power or carrying out of any duty or performance of any function under or in terms of this Act or the rules.

(2) For the purpose of this section, 'bona fide' shall include the negligent exercise of a power or the carrying out of a duty, but shall exclude gross negligence, wilful misconduct or dishonesty>>.".

Repeal of section 39 of Act 55 of 1989

28. Section 39 of the principal Act is hereby repealed.

Transitional provisions

29. Any rule, requirement, directive or decision made, put or issued or other thing done under or in terms of any provision of the principal Act as it was in force immediately prior to the commencement of this Act, shall be deemed to have been made, put, issued or done under or in terms of the corresponding

Extension of application of Act 55 of 1989

30. (1) The principal Act shall apply throughout the Republic.

(2) Any law referred to in the principal Act which is not yet applicable in a territory to which the principal Act is extended, shall for the purposes of the principal Act be deemed to be applicable in such territory.

Short title and commencement

31. This Act shall be called the Financial Markets Control Amendment Act, 1995, and shall come into operation on a date fixed by the President by proclamation in the Gazette.