

PRESIDENT'S OFFICE

No. 1873. 20 November 1996

NO. 73 OF 1996: FINANCIAL MARKETS CONTROL AMENDMENT ACT, 1996.

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

ACT

To amend the Financial Markets Control Act, 1989, so as to insert, amend or delete certain definitions; to further regulate restrictions on the management of investments; to further regulate the juristic personality of an association; to make further provision for the rules of a financial exchange; to make further provision for the separation of funds of members and other persons; to provide for the recognition of interdealer brokers; to further regulate the board for the hearing of appeals; to further regulate advertising or canvassing in relation to financial instruments; 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 Financial Markets Control Amendment Act, 1995, so as to further regulate the application of that Act; 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 55 of 1989, as amended by section 29 of Act 97 of 1990, section 23 of Act 54 of 1991, section 36 of Act 83 of 1992 and section 1 of Act 55 of 1995

1. Section 1 of the Financial Markets Control Act, 1989 (hereinafter referred to as the principal Act), is hereby amended-

(a) by the substitution for paragraph (b) of the definition of "financial market" of the following paragraph:

"(b) by means of any system or facility;"

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

"'interdealer broker' means a participant in a financial market who facilitates transactions in listed financial instruments between members;" and

(c) by the substitution for paragraph (b) of the definition of "loan stock" of the following paragraph:

"(b) an institution or body contemplated in section 84(1)(f) of the Provincial Government Act, 1961 (Act No. 32 of 1961) a local government body contemplated in the Local Government Transition Act, 1993 (Act No. 209 of 1993), or a provincial government;"

Amendment of section 3 of Act 55 of 1989

2. Section 3 of the principal Act is hereby amended-

(a) by the substitution in the Afrikaans text for subsection (2) of the following subsection:

"(2) Die adviesraad kan van tyd tot tyd ondersoek instel en die Registrateur van advies dien, of aanbevelings by die Minister doen, aangaande enige aangeleentheid betreffende finansiële markte en effektebeurse aandelebeurse, en moet die Minister van advies dien oor 'n aangeleentheid wat deur die Minister na die adviesraad verwys word.";

(b) by the substitution in the Afrikaans text for paragraph (a) of subsection (5) of the following paragraph:

"(a) Die adviesraad kan een of meer subkomitees aanstel om die aangeleenthede betreffende finansiële markte en effektebeurse aandelebeurse wat deur die adviesraad na so 'n subkomitee verwys word, te oorweeg en daaroor advies te gee."; and

(c) by the substitution in the Afrikaans text for subsection (6) of the following subsection:

"(6) Die adviesraad kan die hulp inroep van die persoon of persone wat hy mag nodig vind om hom by te staan, of om aangeleenthede betreffende finansiële markte en effektebeurse aandelebeurse te ondersoek.

Amendment of section 5 of Act 55 of 1989, as substituted by section 2 of Act 55 of 1995

3. Section 5 of the principal Act is hereby amended-

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

"No person shall, as a regular feature of his or her business, manage or 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 financial instruments, unless he or she-";

(b) by the substitution for paragraph (c) of subsection (4) of the following paragraph:

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

(c) by the substitution for paragraph (e) of subsection (4) of the following paragraph:

"(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)."; and

(d) by the substitution in paragraph (a) Of Subsection (6) for the words preceding subparagraph (i) of the following words:

"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

Amendment of section 10 of Act 55 of 1989, as substituted by section 7 of Act 55 of 1995

4. Section 10 of the principal Act is hereby amended-

(a) by the substitution in subsection (1) for subparagraph (ii) of paragraph (a) of the following subparagraph

"(ii) the provisions of section 8(1)(a), (c) or (d) no longer applied to the financial market exchange concerned;"; and

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

"(2) The Registrar shall not refuse to renew a stock exchange financial market licence on any grounds unless he or she has furnished the association concerned with the reasons for his or her proposed refusal and the association has had the opportunity to show cause within a period specified in a notice by the Registrar to the association why such renewal should not be refused.".

Substitution of section 12 of Act 55 of 1989

5. The following section is hereby substituted for section 12 of the principal Act:

"Juristic personality of association

12. An association referred to in section 7 shall as from the date on which it is for the first time issued with a financial market licence be a juristic person capable of suing or being sued in the name in which it is licensed, and of acquiring, owning, burdening, 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 carrying out of its duties in terms of the rules."

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, section 65 of Act 104 of 1993 and section 12 of Act 55 of 1995

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

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

"that no person is admitted as a member or allowed to continue as a member unless that person-";

(b) by the substitution in subsection (1) for item (cc) of subparagraph (iii) of paragraph (a) of the following item:

"(cc) employs the number of brokers persons required in terms of the rules and who comply with the standards and other qualifications contemplated in item (bb);";

(c) by the deletion of subparagraph (i) of paragraph (1) of subsection (1); and

(d) by the deletion of paragraph (w) of subsection (1).

Amendment of section 17B of Act 55 of 1989, as inserted by section 14 of Act 55 of 1995

7. Section 17B 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 a stock exchange as defined in the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), or by a financial 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".

Insertion of section 17C in Act 55 of 1989

8. The following section is hereby inserted in the principal Act after section 17B:

"Recognition of interdealer brokers

17C. An interdealer broker who is not a member of a financial exchange shall comply with such conditions as the Registrar may determine."

Amendment of section 18 of Act 55 of 1989, as amended by section 66 of Act 104 of 1993 and section 15 of Act 55 of 1995

9. Section 18 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 21A of Act 55 of 1989, as inserted by section 17 of Act 55 of 1995

10. Section 21A 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 financial exchange or an employee of a financial 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 financial instruments."

Amendment of section 26 of Act 55 of 1989, as amended by section 18 of Act 55 of 1995

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

(a) by the deletion in subsection (1) of the word "or" 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 whom the Registrar has reason to believe contravenes or has contravened any provision of this Act.",

(b) by the substitution in paragraph (b) of subsection (2) for the words preceding

"(e)" of the following words:

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

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

(c) such any financial exchange, clearing house, member or an officer or employee of a 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 to be the registrar in respect of such financial exchange, member or persons as defined in section 1 of the Inspection of Financial Institutions Act, 1984."

Amendment of section 36 of Act 55 of 1989, as amended by section 28 of Act 54 of 1991 and section 25 of Act 55 of 1995

12. Section 36 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (3) of the following paragraph:

"(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 or regulation made under section 37(1) 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 document or information."

Substitution of section 37A of Act 55 of 1989, as inserted by section 27 of Act 55 of 1995

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

"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 the bona fide or negligent, but not grossly negligent, 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 purposes 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."

Amendment of section 40 of Act 55 of 1989, as amended by section 29 of Act 54 of 1991

14. Section 40 of the principal Act is hereby amended by the substitution in the Afrikaans text for subsection (1) of the following subsection:

"(1) Die bepalings van hierdie Wet, uitgesonderd artikels 3 en 38, en behalwe vir sover die Minister by kennisgewing in die Staatskoerant anders bepaal, raak nie die werking van die Wet op Beheer van EffektebeurseAandelebeurse, 1985 (Wet No. 1 van 1985), of enigiets wat behoorlik daarkragtens gedoen of toegelaat word nie."

Substitution of section 29 of Act 55 of 1995

15. (1) The following section is hereby substituted for section 29 of the Financial Markets Control Amendment Act, 1995:

"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 provision of the principal Act as amended by this Act."

(2) Subsection (1) shall be deemed to have come into operation on 11 October 1995.

Short title

16. This Act shall be called the *Financial Markets Control Amendment Act, 1996* .