

REPUBLIC OF SOUTH AFRICA

STOCK EXCHANGES CONTROL AMENDMENT BILL

(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No 22699 of 21 September 2001) (The English text is the official text of the Bill)

(MINISTER OF FINANCE)

[B 75—2001]

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GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Stock Exchanges Control Act, 1985, so as to enable a stock exchange to regulate price-stabilising mechanisms in its rules or listing requirements; and to provide for matters connected therewith.

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

Amendment of section 40 of Act 1 of 1985, as substituted by section 37 of Act 54 of 1995

1. The following section is hereby substituted for section 40 of the Stock Exchanges Control Act, 1985: 5

“Manipulative practices and price stabilisation

40. (1) No person shall—

- (a) by means of any statement, promise, forecast or any other action which he or she knows to be misleading or which is likely to be misleading, induce any other person to buy or sell listed securities; 10
- (b) directly or indirectly, whether within or outside a stock exchange, by means of the creation of fictitious transactions or the spreading of false reports attempt to stimulate activities or influence or manipulate the prices of listed securities; or 15
- (c) enter into any transaction, including a bear sale, with the intention of influencing or manipulating the price of listed securities.

(2) Despite subsection (1), the use of price-stabilising mechanisms that are regulated by the rules or listing requirements of a stock exchange does not constitute a manipulative practice for purposes of this section or insider trading for purposes of the Insider Trading Act, 1998 (Act No. 135 of 1998). 20

(3) Listing requirements regulating such mechanisms may only be made in consultation with the Registrar.”

Short title

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2. This Act is called the Stock Exchanges Control Amendment Act, 2001.

MEMORANDUM ON THE OBJECTS OF THE STOCK EXCHANGES CONTROL AMENDMENT BILL, 2001

1. SCOPE AND OBJECT OF BILL

The Stock Exchanges Control Amendment Bill (“the Bill”) amends section 40 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985). The Bill seeks to enable a stock exchange to regulate price-stabilising mechanisms in its rules or listing requirements.

2. BACKGROUND OF BILL

2.1 Section 40 of the Stock Exchanges Control Act, 1985, prohibits any form of price manipulation and makes no allowance for price stabilisation. As a result the rules or the listing requirements of the JSE Securities Exchange South Africa do not provide for stabilisation on that exchange. The listing requirements do, however, allow stabilisation to take place in other countries provided that it takes place in accordance with the rules of the relevant exchange.

2.2 The proposed amendment of section 40 is of particular interest to Telkom whose advisors have indicated to the Financial Services Board that at the time of Telkom’s envisaged listing (expected to be within this financial year) they would seek to implement some type of price-stabilising measure in respect of Telkom’s shares on the day of listing and thereafter for a limited period.

2.3 Price stabilisation is practised internationally in many countries, such as Australia, the United Kingdom and the United States of America, and was applied by Old Mutual at the time of its listing on the London Stock Exchange.

2.4 The proposed amendment of section 40 will be necessary to assist Telkom in proceeding with its listing plan.

3. CONSULTATIVE PROCESS

The proposed amendment is similar to clause 74(3) of the proposed Securities Services Bill which was submitted to various persons and institutions for comment. None of them commented on or was opposed to the said clause. Institutions which were consulted include the following:

- 3.1 Absa Trust Limited
- 3.2 Association of Bond Issuers of SA
- 3.3 Bank Supervision: South African Reserve Bank
- 3.4 Black Lawyers Association
- 3.5 Black Management Forum
- 3.6 COSATU
- 3.7 General Council of the Bar
- 3.8 NEHAWU
- 3.9 South African Revenue Service
- 3.10 The Banking Council (South Africa)

4. FINANCIAL IMPLICATIONS FOR STATE

The Bill does not have any financial implications for the State.

5. PARLIAMENTARY PROCEDURE

The State Law Advisers and the National Treasury are of the opinion that the Bill must be dealt with in accordance with the procedure set out in section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

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