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## GENERAL NOTICES

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### NOTICE 2622 OF 2003

#### DEPARTMENT OF TRADE AND INDUSTRY CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

I, Alexander Erwin, Minister of Trade and Industry, do hereby, in terms of section 10(3) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), publish the report of the Consumer Affairs Committee on the result of an investigation made by the Committee pursuant to General Notice 1008 of 2002 as published in Government Gazette No.23537 dated 21 June 2002, as set out in the Schedule.

**A ERWIN**  
**MINISTER OF TRADE AND INDUSTRY**

#### SCHEDULE

## **CONSUMER AFFAIRS COMMITTEE**

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

#### **Report No. 102**

Present Perfect Investments 55 (Pty) Ltd, Citizens Capital Corporation of the Americas Inc, Ms Ignasia Susanna Cilliers, Ms Martha Aletta van der Schyff, E P van der Schyff, B Zwart, C Els, S Genkoe, J Zwart, K Scott, G Toop, F Flanagan, L Cilliers, N Rautenbach, M Fraser and M Bierman

## 1. The Consumer Affairs Committee - a brief background

The Consumer Affairs Committee (the Committee) administers the Consumer Affairs (Unfair Business Practices) Act, 71 of 1988 (the Act). It is a statutory committee in the Department of Trade and Industry that reports to the Minister of Trade and Industry (the Minister). The purpose of the Act is to provide for the prohibition or control of certain business practices.

An "unfair business practice" is defined in the Act<sup>(1)</sup> as any business practice which, directly or indirectly, has or is likely to have the effect of harming the relations between businesses and consumers, unreasonably prejudicing any consumer, deceiving any consumer or unfairly affecting any consumer.

The Committee has wide investigative powers. In broad terms the Committee is empowered to undertake investigations into:

- (a) the business practices of individuals and businesses that could be involved in unfair business practices<sup>(2)</sup>

and

- (b) any business practice in general which is commonly applied for the purposes of or in connection with the creation or maintenance of unfair

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(1) See s 1 the definition section

(2) In terms of sections 4(1)(c) and 8(1)(a). These are commonly referred to as 4(1)(c) and 8(1)(a) investigations. A 4(1)(c) investigation is an informal preliminary investigation whilst an investigation in terms of s 8 is a formal investigation and notice of the investigation is published in the *Government Gazette*. The Committee conducts an 8(1)(a) investigation when it is investigating specific businesses or individuals. Any order by the Minister would only apply to those businesses and/or individuals that are named in the notice.

business practices.<sup>(3)</sup>

A 4(1)(c) investigation enables the Committee to make a preliminary investigation in order to ascertain whether there is an unfair business practice in existence or whether there is a possibility that an unfair business practice may come into existence in the future. Notice of a 4(1)(c) investigation is not published in the *Government Gazette* but if the Committee is of the view that there is evidence of an unfair business practice and it decides to investigate the matter further, notice of the section 8 investigation is published in the *Government Gazette*. The purpose of a 4(1)(c) investigation is to enable the Committee to make a more informed decision as to whether there is a need for a formal investigation. The Minister is not empowered to make any decisions on the strength of a 4(1)(c) investigation but the Minister may do so following a section 8 investigation.

Should the Committee, after the conclusion of a section 8 investigation, resolve that an unfair business practice exists, or may come into existence, it recommends corrective action to the Minister.<sup>(4)</sup> Orders of the Minister are published in the *Government Gazette*. A contravention of an order by the Minister is a criminal offence, punishable by a fine of R200 000 or five years imprisonment or both the fine and the imprisonment.

The Committee was preceded by the Business Practices Committee (BPC) which administered the Harmful Business Practices Act, 71 of 1988 (the former Act). The

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(3) In terms of section 8 (1) (b). This is commonly referred to as an 8(1) (b) investigation. The Committee conducts such an investigation when it is discovered that many businesses or individuals have adopted a particular business practice which appears to be unfair. In other words it is now a general business practice. Any order by the Minister would be applicable to any individual or business that is operating a similar business or that intends to operate such a business in the future regardless of the fact that they were not specifically investigated.

(4) The powers of the Minister are set out in s 12

former Act was amended during 1999.<sup>(5)</sup> As a result, the BPC was replaced by the Consumer Affairs Committee and the definition of a harmful business practice was amended and now refers to an unfair business practice. The investigations which can be undertaken by the Committee have remained the same and those sections of the Act and the former Act are identical.

## **2. Events leading to the investigation**

On 28 May 2002 the Committee received a complaint from the Financial Services Board (FSB). The FSB stated that they had received a telephonic complaint about an investment scheme from Mr James Hume and two documents which he faxed to them. During the conversation Hume explained how the scheme operated. This was a pension scheme known as the "401(K) scheme". Clients had to pay an upfront amount of R5 000 and then further monthly payments of R83.33 for five or ten years (the exact period was uncertain). Within eight days, investors received their R5 000 back, but they had to continue with the monthly payments. After 10 years investors received R96 760.75.

The Committee was immediately concerned that this scheme was nothing other than a money revolving/multiplication scheme.

## **3. Preliminary investigation**

The Committee, in a letter dated 29 May 2002, requested a detailed explanation of the business practice. Ms I S Cilliers in her capacity as a director of Citizens Capital Corporation of the Americas, Inc responded in a letter dated 30 May 2002 as follows:

- "All persons who join our 401(K) Retirement Plan must be an employee

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(5) The Act was amended by the Harmful Business Practices Amendment Act 23 of 1999

or a part time employee of Citizens Capital Corporation of the Americas, Inc.

- We invest the funds with a Registered Foreign Exchange dealer who pays us a monthly return which is capitalized over a period of between 12 and 120 months.
- Our foreign exchange dealers provide us with a contract guaranteeing the amount we will receive at the end of the investment period.
- Our foreign exchange dealers also provide us with Bills of Exchange guaranteeing our returns.
- We can borrow against these should one of our participants need funds immediately.
- We can fax you a copy of the contracts we have with our investors as well as one of the bills of exchange given to us as security.
- I trust that this information will assist you and please note that this offer is ONLY opened to employees of Citizens Capital Corporation of the Americas, Inc."

#### **4. Meeting with Mr E P van der Schyff in Bela Bela (Warmbaths)**

On 7 June 2002, two officers of the Committee met with Messrs E P van der Schyff and B Zwart at the offices of Present Perfect Investment 55 (Pty) Ltd. It became evident that the business is in fact Present Perfect Investments 55 (Pty) Ltd. Mr E P van der Schyff explained that they have a contract with Citizens Capital Corporation of the Americas, Inc. to market the so-called 401(K) Retirement Plan. He explained the scheme as follows:

- \* The participant can pick one of two available options, a monthly

installment for a period of 60 months, or the equivalent in a single payment (that is 60 x installment) immediately. As an example R5 000 is equal to 60 payments of R83.33 (various other options are available from R10 000 to R100 000).

- \* Both the aforementioned (R5 000 or 60 x R83.33) have the same result, which is a return, after 120 months of R96 760.75.
- \* All clients will be employed as part-time or direct agents in order to qualify.
- \* These part-time or direct agents ("clients") after joining are entitled to an interest free loan of up to 90 per cent of the future return on "investment" as indicated on their 401(K) Retirement Plan.

Mr E P van der Schyff further explained that Present Perfect Investments 55 (Pty) Ltd have agreements with a company called Tradex Financial Brokers (TFB) with whom they invest. He explained that an investment of R10 000 earns 15 per cent per month resulting in a return on investment after 36 months of R1 531 518.51. He also provided the officials with copies of a business agreement between Present Perfect Investments 55 (Pty) Ltd and TFB, a one page TFB so-called prospectus document, TFB's return on investment payment instruction document and a so-called Bill of Exchange document.

Mr E P van der Schyff was informed that it was imperative that they address the Committee at its next meeting which was scheduled for 13&14 June 2002 to explain to the Committee why it should not undertake a section 8(1)(a) investigation into their business practices. Mr E P van der Schyff tried to avoid this by informing one of the officials that he had stopped operating and that they did not intend to continue the business practice. Nevertheless, Mr E P van der Schyff was informed by letter that he should address the Committee on Friday 14 June 2002 as the Committee could take a decision to proceed with a formal 8(1)(a) investigation.



## **5. Committee meeting on 14 June 2002**

On 14 June 02, Messrs E P van der Schyff and B Zwart, who were later joined by counsel, addressed the Committee regarding the business practices of Present Perfect Investment 55 (Pty) Ltd, the 401(K) Retirement Plan and Citizens Capital of the Americas Inc. Their address was very confusing and the Committee was extremely concerned that Mr E P van der Schyff appeared to be of the view that his conduct could not be restricted by the laws applicable in South Africa as the 401(K) scheme is operated from America.

The following is an extract from Mr E P der Schyff's address to the Committee:

*"So what we will do is we will cancel all those peoples applications, give them their money back, and they can go to hell as far as I'm concerned" and*

*"Yes because we don't need those people's money. We've got enough money of our own that we can pay it back. So we've already given these people over six hundred thousand Rand (R600 000). The total amount I think we've brought in was one point three (1.3) million. We will give the others back today and that's it and I won't do anymore business in this country believe you me."*

After the discussion with the representatives of Present Perfect Investment 55 (Pty) Ltd, the Committee resolved to proceed with a formal investigation in terms of section 8(1)(a) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No 71 of 1988) as the Committee was of the view that this was a money multiplication scheme. Section 9 of this report deals with the existing prohibition regarding money revolving/multiplication schemes.

## **6. Publication of notice of investigation**

The following Notice was published in Government Gazette No. 23537 dated

21 June 2002:

NOTICE 1008 of 2002  
DEPARTMENT OF TRADE AND INDUSTRY  
CONSUMER AFFAIRS (UNFAIR Business Practices) Act 1988

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

Present Perfect Investments 55 (Pty) Ltd, Citizens Capital Corporation of the Americas, Inc, Ms Ignasia Susanna Cilliers; Ms Martha Aletta van der Schyff; E P van der Schyff; B Zwart; C Els; S Genkoe; J Zwart; K Scott; D Zwart; G Toop; F Flanagan; L de Lange; G van Niekerk; L Cilliers; N Rautenbach; M Fraser; M Bierman; the owner(s), manager(s), any employee(s), agent(s), and/or representative(s) of any of the aforementioned in respect of the business practices of the aforementioned.

**7. Meeting with Mr B Zwart, Mr N J Zwart, Ms S Genkoe and Ms I S Cilliers in Bela Bela (Warmbaths)**

On 27 June 2002 a meeting was held with Mr B Zwart, Mr N J Zwart, Ms S Genkoe (all three are agents) and Ms I S Cilliers one of the directors of Present Perfect Investment 55 (Pty) Ltd.

Ms Cilliers, indicated that she had resigned as a director. Ms Cilliers alleged she was more of a secretary, rather than a director. A letter dated 20 June 2002 supports her allegation as paragraph 9 reads as follows "You were a director/ secretary and received a monthly salary which you received, the commission I gave you was a bonus and not a right." This letter is from a Mr K A Scott and indicates him as a director. The letter is not signed and it is not known whether the Companies and Intellectual Property Registration Office has been notified of the directorship change. According to Ms Cilliers, Mr Scott had been with the business, from before she joined and was a director of Trackstar.

The three agents explained the business as follows: (it appears that the selling of the 401(K) Retirement plan and the loan plans are all interwoven and the requirements are unilaterally altered by Mr E P van der Schyff):

**401(K) Retirement Plan:**

This is an investment plan which also allows the investor an **interest free loan** against future proceeds. By investing R5 000 an investor is entitled to receive an amount of R96 760.75 after 120 months. The investor may also pay the R5 000 in 60@ R83.33 (R5 000) installments. The investor's loan can even be as much as 100 per cent of the return (R96 760.75) and needs to be repaid in monthly installments. Different lump sum and monthly payments are shown on the monthly payment chart.

It is important to note that with the lump sum investment the return must be 30% per annum and with the installment payment the return will have to be 38% per annum in order to achieve the R96 760.75 return which is promised to investors.

**Loan plan**

Consumers apply for funds. On the application form the applicant provides inter alia the following information

- "Funding amount required ....."
- "Finance for vehicle/property or business ....."
- "No of Vehicles required ....."
- "Amount of Deposit ....."

An applicant must, with the application, pay a deposit (initially 10 per cent and later it became 11 per cent) of the so-called funding amount required. These loans are allegedly interest free.

**The selling of shares in Citizens Capital Corporation of the Americas, Inc**  
The investigating officials were informed that Mr E P van der Schyff had recently started selling shares in the abovementioned company. It was alleged that the

share certificates were printed at a business in Pretoria and then issued by Mr E P van der Schyff. No further information was received.

#### **8. The involvement of Tradex Financial Brokers (TFB)**

Mr T W Steenberg was requested to explain his involvement. He trades for his own account as Tradex Financial Brokers and apparently borrowed R50 000 from Mr E P van der Schyff. The so-called "bill of exchange" was drawn up at the insistence of Mr E P van der Schyff and was supposed to be in lieu of life insurance. In his response Mr Steenberg explained that he intended to return the borrowed money to Mr E P van der Schyff and did not intend to take any investors' money. A more comprehensive response was requested but never received.

#### **9. Existing prohibitions**

- 9.1 In Notice 1135 of 1999<sup>(6)</sup>, the Minister declared the following practice to be a harmful business practice and declared it unlawful:

"The operation of or participation in a multiplication scheme offering or promising or guaranteeing an effective annual interest rate of 20 per cent and more above the REPO rate determined by the South African Reserve Bank, to any investor or participant, whether or not the investor or participant becomes a member of the lending party. The applicable REPO rate is the rate which applied at the date of the investment or commencement of participation. The effective annual interest rate will be:

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(6) An investigation in terms of section 8(1)(b) of the Harmful Business Practices Act, 71 of 1988, into money revolving schemes. The report and the Minister's order were published under Notices 1134 and 1135 respectively in Government Gazette 20169 dated 9 June 1999.

$$r = \frac{Rx1200}{CxT}$$

Where:

- r = the effective interest rate,  
R = the interest in Rand, which is the difference between the amount paid out to the investor or participant and the amount invested,  
C = the amount invested by the investor or any amount paid by a person to become a member of a scheme, and  
T = the period of the investment in months.

On the evidence before the Committee the business practice of Present Perfect Investments 55 (Pty) Ltd appears to be a contravention of Notice 1135 as the return on investment offered was higher than the REPO rate plus 20 per cent.

9.2 Notice 777 of 1995. An investigation into Debt Mediation and loan assistance was conducted by the former BPC's<sup>(7)</sup>. Notice 777 of 1995<sup>(8)</sup> was a direct result of Report 30 and the Minister's prohibition reads as follows:<sup>(9)</sup>

"the business practice whereby an intermediary, directly or indirectly, in respect of a money lending transaction or an application by any person to borrow an amount of money, demands, receives or recovers any valuable consideration, excluding bank charges or lawfully permissible interest, from the borrower or from any person so applying, whether for his own account or on behalf of any person other than the moneylender, but excluding agreements in terms of which the fee of the intermediary is recovered from the loan amount;..... is declared unlawful".

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(7) Report No 30 *Government Gazette* 15470 4 February 1994

(8) *Government Gazette* 16609 18 August 1995

(9) See s 2 of the Notice

## **10. Reporting the matter to the Commercial Crime Unit**

The matter was reported to the Commercial Crime Unit of Polokwane (Pietersburg) on 11 July 2002.

According to newspaper reports Mr E P van der Schyff was arrested on 6 November 2002 regarding his money making scheme in which some 200 investors have invested R3 million.

## **11. The unfair business practice**

11.1 From the lists received from Mr E P van der Schyff it is evident that very few of the consumers that applied for a loan received the loan. Some were paid a portion of their own, already paid, so-called "share payments".

11.2 The business practice of requiring/demanding an advance deposit of between 10 and 11% of the loan amount is in the Committee's view a contravention of Notice 777 of 1995 and as such is a criminal offence.

11.3 The business practice of offering, for example a participant in the 401(K) Retirement Plan, an effective annual interest rate of 38 per cent return on investment ( $R83.33 \times 60 \text{ months} = R96\,760$  after 120 months) is a contravention of Notice 1135 of 1999 and as such is a criminal offence.

11.4 The so-called 401(K) Retirement Plan was not registered with the FSB.

11.5 Participants were lured into joining with a promise of an interest free loan on the future return on investments.

11.6 No substantiation or proof could be given regarding the registration and/or

existence of the so-called American company, Citizens Capital Corporation of the America, Inc.

- 11.7 No evidence was provided to prove that TFB can or has in the past achieved a monthly growth of 15 per cent and the so-called bills of exchange received from TFB which were issued by Mr T W Steenberg, on the insistence of Mr E P van der Schyff, are in all probability worthless.

## **12. The parties involved**

### **12.1 Mr E P van der Schyff**

At the meeting of 27 June 2002, Mr B Zwart, Mr N J Zwart, Ms S Genkoe (all three are agents) and Ms I S Cilliers one of the directors (she has resigned as a director) of Present Perfect Investment 55 (Pty) Ltd, all these people indicated that Mr E P van der Schyff was running the business(es) and that he is the "mastermind" behind it all.

Mr T Steenberg trading as Tradex Financial Brokers also in his letter indicated that the so-called "bill of exchange" was drawn up on Mr E P van der Schyff's insistence.

The Committee during April/May of 2000 investigated the business practices of Mr E P van der Schyff, Para-Legal Service and Hence Trade 36. The practice was the selling of shares in a franchise. The complainant was lured into paying R40 000 for 1066 shares with the promise that he will receive a return of R4 800 (12 per cent ) per month. This investigation was discontinued when it became known that the entities are in liquidation and after receiving confirmation from the Commercial Crime unit of Pietersburg that they were busy with a criminal investigation into the affairs of the aforementioned.

## 12.2 The agents

Mr E P van der Schyff at the meeting of 14 June 2002 provided the Committee with a list of the agents and which also indicated the clients of each of these agents. The list has the following headings; **client name**, **loan amount** (the amount of loan applied for), **share payment** (the advance fee/deposit that was received) and **paid to clients**.

Agent Name	Number of clients	Loan amount	Share payments	Paid to clients
B Zwart	17	2 456 937	281 459	311 751
F Flanagan	5	2 546 760	273 000	189 000
S Genkoe	21	1 307 000	137 540	77 500
N Rautenbach	16	2 225 835	115 000	14 000
M Bierman	2	387 103	20 000	8 000
M Fraser	5	437 043	25 500	10 000
K A Scott	1	160 000	16 000	0
G Toop	25	1 216 741	45 150	19 500
C Els	17	3 063 635	142 870	39 000
J Zwart	5	2 455 070	<u>191 000</u>	<u>0</u>
<b>Total</b>			<b><u>1 247 519</u></b>	<b><u>668 751</u></b>

- B Zwart As part of the amount indicated as paid to clients, B Zwart's own name appears to the amount of R110 491. B Zwart did not make a so-called share payment.
- F Flanagan As part of the amount indicated as paid to clients, F Flanagan's own name appears to the amount of R158 000. F Flanagan did not make a so-called share payment.
- S Genkoe Ms Genkoe has received commission payments. It is



alleged by Ms Genkoe that she was given permission to use an amount of the deposits that clients applying for the loans have paid to take as part-payment of her own commission, commission of her agent(s) and to repay certain clients which have cancelled. The amounts involved are not known.

### 12.3 Agents that were not involved

- **Mr D Zwart**            The surname in the Notice should have read Swart. Mr Swart indicated that his initials are A (Andries) W and that he is nicknamed Dries. He is one of Mr B Zwart's clients and paid two deposits (1) R4 205 for a loan of R76 447 and (2) R127 331 for a loan of R578 779. He was initially approach to also buy a franchise for an amount of R50 000 which he did not do. He never acted as an agent and his involvement was that of a client. He has laid charges against Mr E P van der Schyff with the Commercial Crime Unit of Polokwane (Pietersburg).
- **Mr G v Niekerk**        Mr v Niekerk indicated that he is an insurance broker and never had any dealings other than that of selling short-term insurance to Mr E P van der Schyff.
- **L de Lange**            No contact could be made with this agent. There is no evidence that this person acted as an agent other than the name appearing on the brochure. The list that Mr E P van der Schyff gave the Committee does not include this person.

### 13. Recommendation

The Committee is of the view that the business practices of the persons and/or businesses under investigation are unfair business practices and that there are no grounds justifying these practices in the public interest.

The Committee therefore recommends that the Minister<sup>(10)</sup> declare unlawful the business practice whereby the parties known as Present Perfect Investments 55 (Pty) Ltd, Citizens Capital Corporation of the Americas Inc, Ms Ignasia Susanna Cilliers, Ms Martha Aletta van der Schyff, E P van der Schyff, B Zwart, C Els, S Genkoe, J Zwart, K Scott, G Toop, F Flanagan, L Cilliers, N Rautenbach, M Fraser and M Bierman directly or indirectly,

- (a) demand, receive or recover any valuable consideration, in advance or at the time of applying for a loan, from a prospective borrower whether on his own account or for any person;
- (b) offer investors more than 20 (twenty) per cent return on investment above the REPO rate as determined by the South African Reserve Bank which constitute a harmful business practice as published in Notice 1135 of 1999;
- (c) market a retirement plan that is not registered with the FSB;
- (d) elicit any payment in advance for any scheme/project/venture in future (any cost for any services rendered may only be recovered from income derived out of such scheme/project/venture once it is up and running);
- (e) use misleading statements such as "interest free loan" on any documentation;
- (f) imitate any documents such as a "Bill of Exchange" for the purpose of misleading a consumer into believing that it is a genuine document and

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(10) In terms of s 12 (1) (b)

- (g) offer and/or solicit the public to purchase the unissued share capital of a company without a proper registered prospectus as is required in the Companies Act, 61 of 1973;

Signed by

**PROF T A WOKER**

**VICE-CHAIRPERSON: CONSUMER AFFAIRS COMMITTEE**

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