NOTICE 2761 OF 2004

DEPARTMENT OF TRADE AND INDUSTRY

CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

I, Mandisi Mpahlwa, Minister of Trade and Industry, in terms of section 12 (6) (a) (iii) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), hereby give notice that I intend publishing the following notice in the *Government Gazette.* Interested parties are hereby invited to comment on the proposed notice. These comments must be directed to the address which appears at the end of the proposed notice.

NOTICE IN TERMS OF SECTION 12 (6)(a) (iii) OF THE
CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

"I, Mandisi Mpahlwa, Minister of Trade and Industry, after having considered a report by the Consumer affairs Committee in relation to an investigation of which notice was given in Notice 3281 of 2000 published in Government Gazette No. 21585 of 22 September *2000,* which report was published in Notice 2759 in Government Gazette No. 27052 of **2** December 2004, and being of the opinion that an unfair business practice exists which is not justified in the public interest, do hereby exercise my powers in terms of section 12(i)(b) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988), as set out in the Schedule.

SCHEDULE

1.   In this notice, unless the context indicates otherwise -

   "unfair business practice" means to, directly or indirectly, in the course of business, operate, conduct, promote or cause to operate, conduct or promote a multiplication scheme, a chain letter scheme, a pyramid scheme or a binary scheme.

   1(a)   A **multiplication scheme** exists when a person offers, promises or guarantees an effective annual interest rate of 20% and more above the REPO rate as determined by the South African **Reserve Bank,** to any

consumer, investor or participant, whether or not the consumer, 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:

$r = \dfrac{R \times f}{C \times T}$, 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 days, weeks or months. If T is in days, weeks and months respectively, **f** = 36 500, 5 200 and 200 respectively.

2(a)   A **chain letter** is a scheme:

(i)   that has various levels;

(ii)   wherein a new recruit is canvassed by an existing participant;

(iii)   wherein the new recruit is expected to pay a certain amount to one or some or all of the existing participants in his or her "upline" **as** well as the promoter of the scheme, whether or not the new recruit receives a product or service;

(iv)   wherein the new recruit would recover his or her monies **by** recruiting another recruit, who is expected to pay one or some or all of the existing participants in his or her "upline" as well as the promoter of the scheme, whether or not the recruit receives a product or service;

(v)   wherein the events in (i) to (iv) above repeat themselves and an existing participant would then receive money from all the recruiting done by the new recruit and his or her recruit as well as

those further downline;

    (vi)   whereby the new recruit's name appears at the bottom of a list or at the bottom end of any number of levels, and should the new recruit canvass one or more new recruit, the new recruit will move one place up on the list or to the next higher level and the further new recruit will then appear at the bottom of the list or at the bottom end of any number of levels;

    (vii)   whereby the new recruit's name will eventually appear at the top of the list or at the top of any number of levels should the events in *(i)* to *(vi)* above repeat themselves;

    (viii)   whereby the new recruit's name, once he or she has reached the top of the list or the levels, and should the events in *(i)* and *(v)* above repeat themselves, will no longer appear on top of the list or the levels.

(b)   For the purpose of a chain letter scheme -

    (i)   **"upline"** means the name of a participant on a list above the name of a new recruit or new participant and

    (ii)   **"downline"** means the name of a participant on a list underneath the name of a new recruit or new participant.

(3)(a)   A **pyramid scheme** means any plan or operation by which a participant gives consideration for the opportunity to receive compensation which is derived primarily from the person's introduction of other persons into a plan or operation rather than from the sale of products by the participant or other persons introduced into the plan or operation.

(b)   **For** the purpose of a pyramid scheme: -

(i)   **"participant"** means a person who contributes money or any other form of consideration into a pyramid scheme;

(ii)   **"consideration"** means the payment of cash or purchase of goods, services, or intangible property but consideration does not include purchase of products furnished at cost to be used in making sales and not for resale, purchase of products where the seller offers to repurchase the participant's products under reasonable commercial terms and the participant's time and effort in pursuit of sales or recruiting activities;

(iii)   **"compensation"** means the payment of money, a thing of value, or any financial benefit or any discounts which may accrue to the participant but compensation does not include payments to Participants based upon sales of products purchased for actual use or consumption, including products used or consumed by participants in the plan and payment to participants under reasonable commercial terms;

(iv)   **"product"** means a good, a service, or intangible property of any kind;

(v)   **"promote"** means to operate, or advertise or to induce or attempt to induce another person or persons to be participants;

(vi)   **"reasonable commercial terms"** includes repurchases by the seller, at the participant's request, and upon termination of the business relationship or contract with the seller, of all unencumbered products purchased by the participant from the seller within the previous 90 days which are unused and in commercially resaleable condition, provided that repurchase by the seller shall be for not less than ninety percent of the actual amount paid by the participant to the seller of the products, less any

consideration received. by the participant for purchase of the products which are being returned and less a reasonable handling charge of not more than 25 per cent of the products' original purchase price. A product shall not be deemed non-resaleable solely because the product is no longer marketed by the seller, unless it is clearly disclosed to the participant at the time of the sale that the product is a seasonal, discontinued, or special promotional product, and not subject to the repurchase obligation

(4)(a)　**A binary scheme** is a scheme in which:

(i)　　a participant is required *to* sell at least two of an entity's products or packages (hereafter called products) to two different persons who are in turn each required to sell to two further participants who are in turn required to sell to two further participants and the process is repeated;

(ii)　　each participant is assigned to two downlines or legs, which could be labelled *left* and ***right,*** or A and B, whatever the case may be;

(iii)　　any additional products sold by a participant are assigned below these left and right legs in the first available node, from top to bottom and left to right in the matrix;

(iv)　　participants receive commission *for* all sales, or batches of sales, no matter how many levels there are in their downlines;

(v)　　the commissions paid are dependant on a particular ratio that must be maintained between the sales on the left and right legs, such as a "⅓-rule". The "⅓-rule" would require that, in order to receive commissions, at least ⅓ of the sales credited to a participant's downline must come from one **of** the two legs;

(vi)　　**the** maximum earnings per **week or** month per **participant are**

limited to a certain amount but this need not be the case.

(b)   For the purpose of a binary scheme: -

(i)   **"downline"** means the two lines or legs assigned to a participant to which sales are credited based on a certain rule and in terms of which the commission payable is determined.

2.   Any person who operates, conducts, promotes or causes to operate, conduct or promote an 'unfair business practice' commits an offence.

3.   Notice **1135** of 1999, published in Government Gazette No 20169 dated 9 June 1999 is hereby repealed.

4.   This notice shall come into operation upon the date of publication hereof."

On the recommendation of the Consumer Affairs Committee I may, in a particular case, in terms of section 12 **(6)**(c) of the Act in writing, grant exemption from a prohibition contemplated in this notice to such extent and for such period and subject to such conditions as may be specified in the exemption. Such applications for exemption must be directed to:

The Secretary, Consumer Affairs Committee, Private Bag **X84,** Pretoria, 0001

(For attention: Mr Ebrahim Mohamed, **Fax:** (012) 394 1542)

M MPAHLWA

MINISTER OF TRADE AND INDUSTRY