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**REPUBLIC OF SOUTH AFRICA**

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## GENERAL NOTICES

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### NOTICE 2976 OF 2004

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

I, Mandisi Mpahlwa, 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 783 of 2002 as published in Government Gazette No. 23457 dated **24** May 2002, as set out in the Schedule.



**M B M PAHLWA**

**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 114**

**COMTRADE CO-OPERATIVE SOCIETY LTD**

## COMTRADE CO-OPERATIVE SOCIETY LTD

### 1. THE COMPLAINT

On 2 April 2001 the Committee<sup>(1)</sup> received a complaint from a consumer who invested R0.5 million with Comtrade Co-operative Society Ltd (Comtrade) on 26 August 1999. The complainant alleged that he met an old acquaintance of his, Mr R Zaiman (Zaiman), at a funeral. When Zaiman learned that the complainant recently retired, he told the complainant about a good investment opportunity in Comtrade. Comtrade allegedly traded in commodities. Zaiman referred the complainant to a Comtrade agent. In addition to the R0.5 million invested, the complainant also paid a membership fee of R100. Profits made by Comtrade would have been split 80/20 in favour of the investors.

### 2. COMTRADE AND ITS WEBSITE

The following names appeared in a Comtrade colour brochure, under the heading "Who will be flying with you":

**Eric Evans**, leveraged insurance products, world wide trade and tax friendly banking services; **Dr Bodika**, Central Africa commodity specialist; **Mike Andrew**, SAFEX affiliate and money market and derivative specialist; **Johan Jooste**, portfolio manager; **Schalk van Schalkwyk**, political analyst; **Bill Brown**, foreign exchange and risk consultant (director); **Corrie Kruger**, commodities an investment advisor (director); **Raymond Zaiman**, project consultant (secretary); **Ron Mason**, US private. banker **Dr Lew Brandf**, US banker; **Dr Lena van der Merwe**, chemical sciences and **Rassie Duvenhage**, financial analyst.

The following information and statements were retrieved from the website <http://www.comtrade.za.net> on 3 April 2001.

- "This document is the sole property of Comtrade Co-operative Society Limited and is not meant as an offer to any person or groups of persons in particular.
- Why a co-operative society? We do not believe in the traditional 'one sided' nominal capital input-company. To us - there are more to members than a mere nominal share price. And we are an exclusive group of people with individual ideas, skills, expertise and business contacts; all geared towards maximising profit for all co-operative members.
- Why commodity trading and projects? Yes, there is money to be made in financial instruments, stocks, unit trust, etc but we believe that at least a sizeable portion of one's investment should be in commodities and manufacturing for the following reasons: 1998 proved to be a memorable

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(1) The Consumer Affairs Committee, a statutory body in the Department of Trade and Industry.

year on the stock market, not one that many investors would like to remember ... this in itself may stifle investor confidence; the millennium computer bug (y2k) may have an adverse effect on financial markets; possible financial and political instability in one corner of the world is enough to cause a new outbreak of the 'Asian flu' all over the global village.

- The commodity trade. Why would you want to be part of the commodity trading market? Consider the following: Diversification of portfolio, higher than average returns, some earning in foreign currency (which forms a natural hedge against rand weakness).
- What commodities are we currently trading? Firstly we do not restrict our market participation in any format and are always looking to expand our product base with interested parties. Recently we have put together deals in the following commodity markets: timber (Africa), roses (Africa/Holland), diamonds (Africa), gold (Africa), steel, aluminium (S Africa), sugar beans and salt.
- What can you expect in return for your participation? Our performance over the last year has been good and we have achieved returns in excess of 100%<sup>(2)</sup>. This may seem too good to be true but we can maintain and improve upon these returns once our running costs reach capacity. The more we can spread the product range, the more stable and predictable the income will be. Most of our current dealings are on a joint venture basis where we supply the infrastructure and expertise to enable the investor to maximise his returns.

### 3. EXPERIENCES OF THE COMPLAINANT

Comtrade informed the complainant on 27 August 1999, a day after he invested R0.5 million, that his membership application has been "successful" and a copy of the joint venture agreement between the complainant and Comtrade was included in this letter. The "agreement" can hardly be described as an agreement. The contents boiled down to the fact that the joint venture will deal in commodities and will conduct business until the final date. The final date was not specified. Up to this unspecified date the co-operative would have unrestricted use of the capital, whereafter it would be paid back to the investor within 30 days.

On 12 October 1999 Comtrade sent a "Notice to all members of Comtrade Co-operative re quarterly returns". The notice stated: "We have pleasure in informing you that the period 01 July 1999 to 30 September 1999 brought forth excellent growth. We are proud to declare a 25%<sup>(3)</sup> growth to our members" (signed RL Zaaiman, secretary).

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(2) This figure was never substantiated.

(3) This figure was never substantiated.

A similar notice was sent to members on 17 December 1999. Members were informed that "... the year 1999 brought forth excellent growth. We are pleased to declare a 91% profit<sup>(4)</sup> to our members. We also congratulate you on your excellent decision to enter into Joint Venture with Comtrade" (signed RL Zaaiman, secretary).

On 2 May 2000 the members were informed: "We are proud to declare a 12% profit to our members. Due to Tandan's<sup>(5)</sup> (see later) strategic equity acquisitions, our profit for the first term is relatively low, but this will, according to them, change later in the year" (signed WH Brown, director).

During the second quarter of 2000, the Comtrade agent, informed the complainant that "... things do not look that good at Comtrade". On 8 May 2000 the complainant requested Comtrade to refund his investment plus the growth. He stated that his investment was for five years but that his circumstances had changed and that he needed the money. Zaaiman told him that he should withdraw his request for a refund because he would be guilty of breach of contract and would receive less than he had invested. "In any case", Zaaiman said "everyone will in any case receive their money back in two weeks".

On 7 September 2000 Comtrade sent a notice to its members stating that its "trading-arm partner", Tandan, had encountered a "few problems".

#### **4. MEETING OF THE COMMITTEE HELD ON 13/14 JUNE 2001**

At the meeting of the Committee on 13/14 June 2001, it resolved to undertake a section 4(1)(c) investigation<sup>(6)</sup> into the business practices of Comtrade Co-operative Society Ltd and its directors.

#### **5. MEETING WITH BROWN AND EVANS ON 31 JULY 2001**

Investigating officials<sup>(7)</sup> of the Committee met with Messrs William Henry Brown (Brown) and E Evans (Evans) on 31 July 2001. It appeared that Comtrade, a trade co-operative, was registered on 18 January 1999. The first directors of this co-operative were Brown, Cornelius Johannes Kruger (Kruger) and a Mr Taute. The following was established during this meeting:

- Comtrade had ±300 "partners" who had invested ±R20 million. The "joint venture partners" were to receive 80 per cent of the profits earned on the projects and Comtrade the remaining 20 per cent.

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(4) This figure was also not substantiated and the "profits" were not paid to members.

(5) Tandan South Africa (Pty) Ltd.

(6) A section 4(1)(c) investigation in terms of the Consumer Affairs (Unfair Business Practices) Act, 71 of 1988 (the Act). The Act is administered by the Committee.

(7) Appointed in terms of section 7 of the Act.

- The co-operative was registered because Comtrade did not want to contravene the Banks Act (the taking of deposits).
- Since the registration of the co-operative, all investments received were paid over to Tandan, less 5 per cent which was paid to agents as commission. The "agent" who persuaded the complainant to invest therefore received 0.05 times R0.5 million, or R25 000.
- Comtrade was not involved in commodity trading. All trading was done by Tandan. Comtrade had an exclusive arrangement with Tandan to provide investment funds with each to share 50/50 in the profits. Niko Shefer, a director of Tandan, allegedly had nothing to do with Comtrade.
- Brown became aware of a problem with Tandan during March/April 2000. Because of the involvement of Kruger and Zaaiman with Tandan he never questioned the profit figures supplied by Tandan. Brown alleged that since he realised there was a problem, Comtrade was ringfenced and no further investments were accepted.
- Efforts were being made to recoup some of the money of the Comtrade investors. When Comtrade discovered that its investors' money was lost, it allegedly accepted a nine percent shareholding in a start-up copper and cobalt mine in the Democratic Republic of the Congo (DRC). This shareholding was received from a "... sister company of Tandan in the Seychelles".

There were obviously a number of concerns about Comtrade:

- The reason why Comtrade was registered as a co-operative was not clear. Comtrade appeared to have done nothing else than take "investments" from unsuspecting clients. It was a bank in disguise. All "investments", less the commissions to agents, were channelled to Tandan. Tandan could have employed the "agents" itself. Perhaps there are reasons why Tandan did not want to be directly associated with the investors.
- There was no evidence whatsoever that Tandan used the investments received from Comtrade for commodity trading.
- The separate and "joint venture" contracts between the local "investors" and Comtrade were also suspicious. Why did the directors not issue shares in a public or private company to shareholders?
- There was also a "joint venture" contract between Comtrade and Tandan. The money from the separate joint ventures between Comtrade and its "investors" were scrambled in a single joint venture between Tandan and Comtrade.

## 6. FURTHER MEETINGS OF THE COMMITTEE

The Committee met with Brown, Zaaiman, E Evans and Kruger at its meeting on 16 and 17 August 2001 and thereafter resolved that it must be established whether *the dti*<sup>(8)</sup> would appoint forensic auditors to investigate the business practices of Comtrade. The forensic auditors Fezal and Associates (Fezal) were appointed by *the dti*

Brown, Evans and Taute attended the meeting of the Committee held on 18 and 19 April 2002 and answered questions put to them by Fezal. At this meeting the Committee took note that the Registrar of Co-operatives had also appointed an inspector to investigate the matter. The Committee further resolved to undertake a section 8(1)(a) investigation<sup>(9)</sup> into the business practices of Comtrade and its directors.

Notice of the section 8(1)(a) investigation was published under Notice 783 in Government Gazette 23457 dated 24 May 2002 and interested parties were requested to make written representations within a period of 30 days from the date of the publication. The Notice read as follows:

"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 Consumer Affairs Committee intends undertaking an investigation in terms of section 8(1)(a) of the said Act into the business practices of Comtrade Co-operative Limited; Mr Cornelius Johannes Kruger; Mr Carel Rudolf Taute; Mr William Henry Brown and Mr Raymond Luther Zaaiman and any director; employee; agent and/or representative of any of the aforementioned in respect of the activities of aforementioned". .

## 7 FURTHER EVENTS

### 7.1 *Letter from Wertheim Becker attorneys*

Wertheim Becker attorneys acted for the SAP Communal Dinner Table of the Witwatersrand and Superintendent Van Jaarsveld. On 25 July 2002, Wertheim Becker

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- (8) The Department of Trade and Industry.
  - (9) Notice of a formal investigation in terms of the section 8(1)(a) of the Act is published in the Government Gazette and the Chairman of the Committee also issues a press statement about such an intended investigation. Should the Committee, after a section 8(1)(a) investigation, find that an unfair business practice exists, it recommends corrective action by the Minister to ensure the discontinuance of the unfair business practice. The powers of the Minister are set out in section 12 of the Act.

An unfair business practice, in terms of section 1 of the Act, means any business practice which, directly or indirectly, has or is likely to have the effect of (a) harming the relations between businesses and consumers; (b) unreasonably prejudicing any consumer; (c) deceiving any consumer; or (d) unfairly affecting any consumer.



informed the Committee that they brought the Corntrade matter to the attention of the Commercial Crime Unit and the "Department of Co-operatives". They also pointed out, respectfully, "... that this matter appears to be one which is most appropriate for the appointment of a curator (with the concurrence of a special court) in order to realise Comtrade's assets (which in the case of Comtrade constitutes claims in favour thereof, and specifically the claims which it has against Tandan South Africa (Pty) Ltd and or African Mining Management Limited) inasmuch Comtrade may be found to be involved in an unfair business practice, and to distribute such assets between the consumers (namely members) concerned, and to take control and/or manage the whole or any part of the business of Comtrade" and "**We** do confirm that Tandan has been liquidated, and that the appointed liquidator is Enver Motala/Terry Morrison of Syfrets". ... The name of Mervyn Swartz was later added to the list.

## **7.2 Judgement against Comtrade**

It appears from a letter from Wertheim Becker to a Mr Swiegers (apparently an attorney for Corntrade), that judgment was granted against Comtrade in the High Court of South Africa (Witwatersrand Local Division) on 26 March 2002 for the payment of R450 032.71 and interest thereon at 15.5 per cent per annum from 30 January 2001 to date of payment.

Brown informed Wertheim Becker that Comtrade does not have any means with which to satisfy the judgement, because its only asset consists of shares which Comtrade holds in African Mining Metals Management Limited"). Comtrade indicated that the asset (the shares) was not realisable at that stage. Wertheim Becker called on Swiegers to provide them with precise details pertaining to such shares, and in particular the number of shares held by Comtrade, with sufficient particularity pertaining to the identification thereof, such as share certificate numbers and all other pertinent details reflected thereon. This information was not made available.

## **7.3 "SA firms exploited DRC war, says report"**

The following is a quote from an article "SA firms exploited DRC war, says report", in Business Report, dated 22 October 2002, and written by Quentin Wray:

"The UN advised financial restrictions for 29 companies. They included one from South Africa, Tandan Group, which was run by Niko Shefer, a convicted fraudster".

## **8. THE FINAL REPORT OF FAZEL**

The Final Report of Fazel contained a number of issues that were already discussed above and these points will not be belaboured. Other aspects dealt with in the Final Report, such as foreign exchange implications and doing business as a registered

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(10) A company registered off-shore

co-operative under the Co-operatives Act<sup>(11)</sup>, are not discussed in this report. Only a number of aspects in the Fezal report are highlighted.

- The scope of the investigation was "... to determine if indeed an unfair business practice is or has taken place".
- Approximately 400 consumers invested some R22 million with Comtrade. The exact amount could not be established because of the complete lack of financial records. Many investors received no return on their investments and in fact lost their initial investment.
- The co-operative "members" purportedly hold a pro rata shareholding, through Comtrade, in a mine in the DRC.
- A firm of bookkeepers were engaged by Comtrade during July 2002. This entity recreated a cashbook and pro forma statements for the period ending 30 September 2000. These records showed that Comtrade had no assets but the R22 million liability. "Moreover, subsequent interviews with the accountants established that Comtrade, from its records could not determine if the funds had in fact invested in commodity trades or had been simply misappropriated".
- A total of 304 investors lost their total investments, while 27 investors (mainly trusts) received a return or funds paid back. Those that received money back, invested ±R1.44 million and received ±R1.81 million. There was no indication as to how a particular investor was selected to be paid. "An inference, however, can be raised of 'self-dealing' as one of the directors, WH Brown, is shown having been repaid the sum of R34 294 on an initial investment of a little over R20 000 in 1999".
- "FAME Equities is shown as having invested R200 000 and was to receive R1.5 million. However, a copy of an internal FAME Equities Memorandum, authorizes the write off of the sum of R7 277 743.74. This raises further questions as it also refers to a capital account and 'Comtrade set of accounts' that Comtrade told us didn't exist. This would seemingly merit closer scrutiny in the search for possible Comtrade assets".
- Because of the lack of financial records, Comtrade could not establish how a particular investor's trade account was doing. "This is not only grossly negligent from a business point of view, but flies directly in the face of representations made in testimony by the directors to the Committee". At a meeting of the Committee on 19 April 2002, which was attended by the forensic auditors, Taute said: "Of course because you do have a contract you have a specific designated way in which you can deal

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(11) Feral established that Comtrade contravened numerous sections of the Cooperatives Act, some of which could be regarded as unfair business practices.

with the profits and that would have been to the benefit of the member or the other contacting party. If the moneys were dealt with only as the cooperative, as a pool, the member would have to take what was dished out to him at a later stage”.

- Fezal is of the opinion that some directors of Comtrade may have individual liability for the actions of Comtrade because Zaaiman and Kruger

“... placed themselves in a conflict position with the membership (of the co-op) in that they worked closely with Tandan (the company supposedly doing the actual commodity trades) under the guise of watching the members’ investment, but never submitted a written report to the members of Comtrade management” and

“... had such a close relationship with Tandan that an inference can be raised as to whether they were in conflict of interests with the membership and raises the inference that they received compensation from Tandan (although they worked out of Tandan’s offices, they were not, according to what records were available, getting any compensation from Comtrade)”.

“Brown, Zaaiman, Kruger and perhaps others acted as agents also and thus received commissions for members brought in and there is no evidence to suggest that this fact was disclosed to the members”.

“Some other directors lead consumers to believe that although the money they were investing was risky venture capital funds, the commodity trades in which the investment were to be made were to be secure by letters of credit or at least the involvement of a prime bank (HBSC) and carried with it some form of ‘guarantee’”.

- The arrangement between Comtrade and its members was an unfair business practice *inter alia* because “... it inherently placed the consumer in conflict in that by signing the ‘joint venture’ agreement with a cooperative in which he was a member, the consumers was contracting with him/her self”.
- “Comtrade had no experience nor expertise in commodity trades, a fact the Management and Directors chose not to share with its members but admitted among themselves”.

### 8.1 ***Fezal’s conclusion***

Fezal concluded: “Based on the results of our investigation, including extensive review of documents provided to us and otherwise obtained, we firmly conclude that the entire scheme and method of doing business by Comtrade is and was an Unfair Business

Practice as defined by the Act. We have come to the conclusion that Comtrade's business, starting with its solicitation, marketing, advertising, misleading of its members and consumers in general and carrying over to the present practice of holding, failure to account for funds, and attempts to liquidate shares in the Democratic Republic of Congo mine, in their entirety, constitute an Unfair Business Practice. While a small number of consumers, 27 out of approximately 311 and receiving a total of **R4** million of a total lost of approximately R18 million, did receive a return on investment, this in and of itself does not cure the problem. After all some do receive money back in the usual pyramid scheme, it does not justify or excuse the scheme itself. The business and conduct of Comtrade, the Co-operative, and its Directors are violations of the Act".

## **8.2 Fezal's recommendation**

Fezal recommended "... that the report of the Committee to the Minister recommend that the Comtrade scheme be declared an unfair business practice under Section 12 of the Act. It is further recommended that the Committee recommend to the Minister that a Curator be appointed under section Section 12(d) to realize the assets, namely the shares in the mine, and any other assets for the benefit of the members. Further, we have reason to believe that ABSA bank's insurance carrier might take a pro rata share in exchange for its paying out approximated R1.34 Million to its 38 clients who lost money through the Comtrade scheme. Moreover, the Curator might look more closely into the relationship between Comtrade and FAME Equities to determine if some asset has been hidden there".

## **9. RECOMMENDATION**

### **9.1 The appointment of a curator**

Wertheim Becker attorneys requested the Committee to appoint a curator, with the concurrence of the special court, in order to realise Comtrade's assets. Fezal recommended that a curator be appointed to realize the assets, namely the shares in the mine, and any other assets for the benefit of the members. Any "other assets" were not identified by Fezal and it would probably be extremely difficult, if not impossible, for the Committee's investigating officials to do so.

It was mentioned above that Comtrade accepted a 9 percent shareholding from a sister company of Tandan in a start-up copper and cobalt mine in the **DRC**. The name of the mine appears to be Ruashi/Etoile. Africa Mining and Metals Management, an off-shore company, appears to own 55 per cent of the shares in Cobalt Metals Company Ltd<sup>(12)</sup> (CMC) and CMC appears to have a 55 per cent interest in "the mining project" called Ruashi/Etoile. Whether the mine really exists is an open question. An official of the Committee called a senior member of Fezal, and he was unaware who the other shareholders in this mine are. CMC was not mentioned in Fezal's report. Although Tandan has been liquidated, it is possible that Shefer and/or his wife hold shares, directly or indirectly, in Ruashi/Etoile.

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(12) Registration number 5760IBC2000, registered off-shore.

Brown transmitted an e-mail to a Mr Keith Atkins of CMC in which he (Brown) "reiterated" his concerns regarding the share structure of CMC. In an e-mail dated 4 August 2002 from Atkins to Brown, the following is *inter alia* stated:

- a "If you perceive a problem with the facts as detailed then I suggest that you take the matter up with Mr Shefer direct. However, I would predict that your quest will be a barren exercise".
- a "In your e-mail you have asked me to comment on the share value as to whether or not the share value remains the same, increases or decreases? When the shares were issued to the Comtrade shareholders by Mr Shefer, he attached a copy of a letter from The Mineral Corporation, our independent consultants, advising of the Net Present Value of the Project at a 20% discount rate, on a fully invested basis as US\$220 million. It is important to understand that to derive that calculation it assumes that in excess of US\$200 million must be invested in the Stockpiles project and in the Refinery for the main orebody (the NPV and the investment sum are the same by coincidence). The value of the share is determined on a willing buyer/willing seller basis since the shares are in an unlisted company registered in The Saint Vincent and Grenadines".

"This puerile attempt to demonstrate to the DTI<sup>(13)</sup> and the Registrar of Co-operatives that you care for your shareholders interests is misplaced and far too late".

Fezal could not find any assets of Corntrade in South Africa. It therefore appeared that Corntrade's only asset was a small indirect holding via Africa Mining and Metals Management and CMC in a "mining project" called Ruashi/Etoile<sup>(14)</sup>. On 22 June 2004, during a telephone conversation, Brown informed an official that his information was that the stockpile of ore was "dwindling". On 13 July 2004 the official established that a company quoted on the Johannesburg Securities Exchange held 68 percent of the shares in a holding company which again holds 80 per cent of the shares in Ruashi Mining SPRL. The remaining 20 per cent is allegedly held directly by the DRC authorities.

According to the Registrar of Co-operatives, an application for the liquidation of Corntrade was made on 11 June 2004

The Committee therefore will not recommend to the Minister in terms of section 12 of the Act that he appoints a curator in order to realize the questionable assets of Corntrade. The appointment of a curator by the Minister<sup>(15)</sup> would be futile, because

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(13) The reference is to *the dti*.

(14) The correct name seems to be Ruashi Mining SPRL, registered in the DRC. The "SPRL" is similar to South African proprietary companies.

(15) In terms of section 12(1)(d) and with the concurrence of the special court. The special court means a court established under section 13(2) of the Act.

such an appointed curator obviously has no jurisdiction in the **DRC**. The curator could, however, seize the shares held by South Africans in Africa Mining and Metals Management and CMC, but no one knows for certain whether this is so.

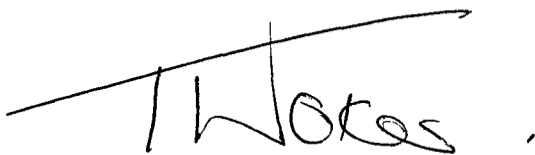
## **9.2 The order of the Minister**

Fezal found that the business practices of the directors of Comtrade, Cornelius Johannes Kruger (Kruger), Carel Rudolf Taute (Taute), William Henry Brown (Brown) and Raymond Luther Zaaiman (Zaaiman) constituted unfair business practices. There are no grounds justifying the practices in the public interest. The Committee agrees with this finding.

It is accordingly recommended that the Minister under section 12(1)(b) of the Act, declares unlawful the business practice whereby Comtrade, Kruger, Taute, Brown and Zaaiman, directly or indirectly:

- (i)
  - (a) invite the public to make investments; or
  - (b) receive investment funds from investors for management or re-investment of such funds on behalf of the investors,

and
- (ii) directs Kruger, Taute, Brown and Zaaiman to -
  - (a) refrain from applying the unfair business practice;
  - (b) cease to have any interest in a business or type of business which applies the unfair business practice or to derive any income therefrom;
  - (c) refrain from at any time applying the unfair business practice; and
  - (d) refrain from at any time obtaining any interest in or deriving any income from a business or type of business applying the unfair business practice.



**PROF T A WOKER**  
**CHAIRPERSON: CONSUMER AFFAIRS COMMITTEE**  
2 September 2004