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- (4) The promoter must ensure that a chartered accountant, registered auditor, admitted attorney or commissioner of oaths conducts the competition and must be reported on through the promoter's internal audit reporting procedures.
- (5) For purposes of section 36(11)(b) of the Act and subject to subregulation (3), a promoter must, for a period of at least five years, retain -
- (a) full details of the promoter, including identity or registration numbers, as the case may be, addresses and contact numbers;
 - (b) the rules of the promotional competition;
 - (c) a copy of the offer to participate in a promotional competition contemplated in section 36(5);
 - (d) the names and identity numbers of the persons responsible for conducting the promotional competition;
 - (e) a full list of all the prizes offered in the promotional competition;
 - (f) a representative selection of materials marketing the promotional competition;
 - (g) a list of all instances when the promotional competition was marketed, including details on the dates, the medium used and places where the marketing took place;
 - (h) the names and identity numbers of the persons responsible for conducting the selection of prize winners in the promotional competition;
 - (i) in the case of a prize exceeding R 1.00 (One Rand) in value, determined by reference to what a consumer would in the ordinary course of business pay to purchase the prize, an acknowledgment of receipt of the prize signed by the prize winner, and his or her identity number, and the date of receipt of the prize;
 - (j) declarations by the persons contemplated in paragraph (d) made under oath or affirmation that the prize winners were to their best knowledge not employees, agents or consultants of the promoter or marketing service providers in respect of the promotional competition, or the spouses, life partners, business partners or immediate family members;
 - (k) a copy of the report contemplated in subregulation (6).
- (6) For purposes of section 36(11)(b) of the Act, a promoter must compile a full report on the conduct and outcome of a promotional competition, detailing as a minimum -
- (a) the basis on which the prize winners were determined;

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- (b) the summary describing the proceedings to determine the winners, including the names of the persons participating in determining the prize winners, the date and place where that determination took place and whether those proceedings were open to the general public;
 - (c) whether an independent person oversaw the determination of the prize winners, and his or her name and identity number;
 - (d) the means by which the prize winners were announced and the frequency thereof;
 - (e) a list of the names and identity numbers of the prize winners;
 - (f) a list of the dates when the prizes were handed over or paid to the prize winners;
 - (g) in the event that a prize winner could not be contacted, the steps taken by the promoter to contact the winner or otherwise inform the winner of his or her winning a prize; and
 - (h) in the event that a prize winner did not receive or accept his or her prize, the reason for his or her not so receiving or accepting the prize, and the steps taken by the promoter to hand over or pay the prize to that prize winner, and must record the name, identity number and contact details of the person compiling the report and the date thereof.
- (7) A promoter must upon request in writing by the Commission forthwith at his, her or its own expense submit any of the documents or materials contemplated in subregulations (5) and (6) so requested to the Commission.

Cautionary statement for alternative work schemes

15. For purposes of section 37(2)(a) of the Act, any advertisement promoting any alternative work scheme contemplated in section 37 (1) of the Act must -
- (a) without detracting from any other provision applicable to advertising or promotion;
 - (b) in a legible size and manner and in a prominent place where it is likely to be seen by a consumer; and
 - (c) without change,
- contain the following notice:

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"Results, examples and testimonials promised or contained in this advertisement may be out of the ordinary and should not be taken to provide guarantees with regard to the availability of work, business, projected income or any other benefit promised or implied. There is no guarantee whatsoever that you will achieve the results or outcomes promised or implied in this advertisement. You are strongly urged to ascertain or obtain, at your own cost, assistance to ascertain the probable results or outcomes based on realistic facts and assumptions and all currently relevant and applicable circumstances."

Interpretation: Fraudulent Schemes and Offers

16. Regulations 17 to 22 must be read together with sections 42(8) and 51 of the Act.

Speculative Software

- 17.(1) In this regulation, unless the context indicates otherwise -

"**consumer**" means any natural person to whom speculative software is offered, supplied or made available;

"**person**" excludes the Johannesburg Securities Exchange;
and

"**speculative software**" means software which claims to assist consumers to understand securities and exchanges and to trade profitably in securities on exchanges and/or software which claims to predict the outcome of horse races, and this software is available on 3½-inch floppy disks, compact disks or via the internet.

- (2) No person may offer or sell speculative software to consumers unless the following statements are included, without alteration in an agreement entered between a consumer and a supplier:
- (a) "I, (initials and surname of the consumer) understand that I am entitled to cancel this contract within five days of the date on which I signed this contract excluding the day of signature as well as Saturdays, Sundays and public holidays. This cancellation must be conveyed in writing by me and must be received by the supplier or any employee of the supplier, within the five-day period, at the physical address of the supplier. 'In writing' includes the use of

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any electronic means to transmit messages, provided a hard copy of the message can be reproduced without alteration by the supplier.”;

- (b) (i) “I prefer to pay the purchase price in a once-off payment, whether by cash, cheque or a debit on my credit card.”;
- (ii) “I prefer to make monthly repayments on my debit card. I understand that should I select this option, the supplier will be credited with the full purchase price, and that I will have to make monthly repayments, including interest at the prevailing interest rates, to the bank.”

(delete the option which is not applicable).

- (c) “The terms, conditions and costs involved for both options were explained to me and a copy of the contract, which include the statements above as well as the signed statement by the supplier that I will be refunded the money paid by me should I cancel this contract within five days, was handed to me.”;

(signature of the consumer).

- (d) “I have not made any verbal promises to the consumer which are not printed in any official literature of the firm. Upon termination of the contract by the consumer as set out above, I shall, within five days as defined above, refund all payments made by the consumer or reverse any credit transaction.”

(signature of the supplier or authorised agent)”

Prohibition on intermediary arranging transport contracts

- 18.** No person may enter into or act upon any agreement for the use of a truck, minibus or any other vehicle, whereby a person, the client, gives or pays to or on behalf of another person, the intermediary, a remuneration of whatever nature, whether goodwill or any other form of consideration, and the intermediary undertakes to arrange transport contracts, whether of cargo or passengers, for execution by the client, unless that agreement expressly -

- (a) prohibits any advance payment by the client to the intermediary; and
- (b) provides that payment by the client to the intermediary in respect of the agreement may be made only from profits generated by the execution of transport contract concerned.

*Draft for public consultation - 28 October 2010***Public property syndication schemes**

19.(1) In this regulation, unless the context indicates otherwise-

"promoter" means a company and its directors, close corporation and its members, partnership and its partners, trust and its trustees and all other persons who are actively involved in the forming and establishment of a public property syndication scheme, and a reference to a company and its directors also refers to a close corporation and its members, or to a trust and its trustees, or to a partnership and its partners or to a sole proprietorship, or their representatives;

"prescribed information" means the prescribed information contemplated in subregulation (4)(b);

"public property syndication scheme" means the assembly of a group of investors invited, by word of mouth or through the use of electronic and print media, radio, television, telephone, newspaper and magazine advertising, brochures and direct mail, to participate in such schemes by investing in entities, which could be companies, close corporations, trusts, partnerships or individuals, whose sole asset or assets are commercial, retail, industrial or residential properties, and, where investors share in the profits and losses in these properties and or enjoy the benefits of net rental growth therefrom through proportionate share of income;

and

"valuer" means a professional valuer or professional associated valuer registered in terms of section 20(a) of the Property Valuers Profession Act, 2000 (Act No. 47 of 2000), with at least five years' experience in the field of attending to valuations of properties.

(2) Promoters may not -

- (a) withhold the prescribed information, in part or otherwise, from investors or potential investors in a public property syndication scheme; or
- (b) include any term, condition or provision in the disclosure document that excludes, limits or purports to exclude or limit the legal liability of the syndication promoter towards the investor in respect of any malicious, intentional, fraudulent, reckless or a grossly negligent act of the syndication promoter, his or her employees, representatives, contractors or subcontractors

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or any other person used by the syndication promoter or recommended by him or her to the investor or prospective investor.

- (3) Promoters must make available the prescribed information to investors who invest in or intend investing in public property syndication schemes, and the prescribed information must be made available to investors or potential investors in a disclosure document, the details of which are set out in subregulation (4)(b).
- (4)(a) Statements, presentations and descriptions must not convey false or misleading information about public property syndication schemes and/or omit material information during the public offer of shares. Material information is information which an investor needs in order to make an informed decision.
- (b) Investors and potential investors must be informed in writing that -
- (i) public property syndication is a long-term investment, usually not less than five years;
 - (ii) there is a substantial risk, in that the investor may not be able to sell his or her shares should he wish to do so in the future; and
 - (iii) it is not the function of the promoter to find a buyer should the investor wish to sell his shares and that it is the investor's responsibility to find his own buyer.
- (5)(a) Investors must be informed in writing that all funds received from them prior to transfer or finalisation must be deposited into the trust account of a registered estate agent, a admitted attorneys or a certified chartered accountant, provided that such trust account is protected by legislation. Individual investors are to be given written confirmation thereof, and it must be clearly stated who controls the withdrawal of funds from that account. Such an account must be designated "XYZ Attorneys/auditors/estate agents Trust Account - the XYZ syndication". In the event of investors paying by cheque, promoters must ensure that the name of the payee is printed in bold on the application forms.
- (b) Funds must only be withdrawn from the trust account in the event of registration of transfer of the property into the syndication vehicle; or underwriting by a disclosed underwriter with details of the underwriter; or repayment to an investor in the event of the syndication not proceeding.
- (c) It must be disclosed whether the property has been bought conditionally or by option, and in either or both cases full details of any condition and or option on

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- which the property was purchased must be disclosed together with the effective date of commencement of the syndication.
- (d) Any direct or indirect interest, which a promoter and or any of his or her family member or any other person who is actively involved in the promotion of that syndication has in the property to be purchased, must be disclosed.
 - (e) It must be disclosed how any capital shortfall will be dealt with.
 - (f) The method of raising the necessary capital to fund the acquisition of the property and the syndication and how any disbursements will be dealt with prior to transfer, must be disclosed.
 - (g) Provision must be made for interest earned to be paid on investors' funds deposited as provided for in paragraph (a) prior to the effective date of the transfer of the property.
- (6)(a) Full details of the promoter of the syndication scheme, such as name, registered company or close corporation numbers, directors, addresses, telephone and fax numbers and e-mail address must be given.
- (b) Full disclosure must be made as to whether the promoter is acting as a principal in the scheme or as an agent for someone else. If the promoter is acting as an agent, he or she must provide full details of the principal.
- (c) The disclosure document, which is to be dated and signed by the promoter, must contain a statement of proper due diligence (commercially and legally) with regard to the property and its tenants prior to the unconditional purchase thereof and he or she must state that this was done and that he or she is satisfied with the results thereof.
- (7)(a) Full details of the syndication vehicle must be disclosed, including the names and addresses, telephone and fax numbers and the e-mail addresses of the property manager, the company secretary, the board of directors, the auditor, the attorney and the valuer.
- (b) In addition full disclosure must be made of the fee structure of the management company or manager(s) and any appointments or contracts relating to the syndication.
- (8)(a) Full disclosure must be made of the type of company structure to be used for the syndication scheme and reference must be made to the legislation governing the company structure chosen. Reference must be made to the company registration number, or advising that the company is still to be formed, the memorandum, the articles of association, the shareholder's agreement, and where applicable, the

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partnership agreement, a deed of trust and the founding statement. The disclosure must state whether a shareholders' agreement exists or not, and if such an agreement exists then it must be attached as an annexure to the disclosure document.

- (b) Full details must be given of the financial year end, the shares to be issued, the shares to be issued in future, control over unissued shares, shareholders' loans and debentures, a pro-forma balance sheet on acquisition (or in the case of new developments, on completion), the income distribution plan, minimum and maximum shareholders or participation quota, any special voting rights, existing and planned gearing, borrowing powers and how they are to be exercised, external borrowing facilities available to investors to finance the acquisition of shares in the investment company and the amount provided in the syndication structure for working capital and reserves.

(9)(a) Details must be given of -

- (i) the title deed and its number;
- (ii) material servitudes or encumbrances if further development is considered with regard to the property;
- (iii) zoning and the relevant town planning regulations insofar as further development is intended with regard to the property;
- (iv) additional development potential;
- (v) the buildings erected or dates of original erection with dates of improvements (including lifts, air conditioning and roof structure) thereto, if available;
- (vi) the physical address, locality and site area, including a map of the area; and
- (vii) insurance cover, name of insurer, types of risks covered, amounts covered, policy due date and policy number.

(b) In addition there must be a statement which sets out -

- (i) the cost of the property to the promoter or the syndication company including acquisition price, cost of renovations, conversion or enhancement including details of any new leases or lease renegotiations which enhance value, marketing and promotional cost fees and the promoter's entrepreneurial mark up, giving rise to the shareholding offer price in the company as at the offer date; and

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- (ii) the valuation of the property as at a date, which must be not more than three calendar months before date of the offer, undertaken by a valuer, in accordance with subregulation (13).
- (c) If the land is to be encumbered by a mortgage bond after the closing date of the offer, the promoter must disclose -
 - (i) the outstanding balance owing by the mortgagor in terms of the mortgage bond including: the rate of interest, the loan repayment period and whether the bond is first ranking or otherwise;
 - (ii) the maximum amount secured by the mortgage bond;
 - (iii) the terms of the mortgage bond;
 - (iv) the identity of the mortgagee; and
 - (v) a statement to the effect that the taking up of such a loan will not be in contravention of the memorandum or articles of association of the company, close corporation, trust deed of the trust, partnership agreement of a partnership or the constitution of the public property syndication vehicle.
- (10) Full details must be given of -
 - (a) any head lease agreement and subleases together with the quantum and location of any vacant space covered by such head lease and subleases, where "quantum" refers to the square meterage and the value involved;
 - (b) any gross or net rental guarantees supplied by the vendor of the property; and
 - (c) actual leases concluded with full details of space let, duration of leases, rentals, escalation rates for the leases, tenant names and security for leases, expenses recovered from tenants, lease renewal options, rental review periods and vacant space.
- (11) The income and expenditure statement must provide -
 - (a) a detailed pro-forma income statement which must detail all projected expenses, contractual expenses and fees payable, gross rentals, recoveries, and projected net income for the syndicating company;
 - (b) a statement as to the long-term vacancy rate with full motivation thereof, but a nil rate is unacceptable; and
 - (c) a statement as to the extent of provision for future maintenance, with full details where applicable.
- (12)(a) Full details must be provided of -

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- (i) the basis used to calculate projections with regard to net income growth, to be based upon rental income derived from leases and or market rental growth, less specified and disclosed, as well as reasonably expected expense projections;
 - (ii) the basis used to calculate projections on capital value, to be stated in Rand currency as estimates, provided they are accompanied by stated, specific assumptions showing how those values are determined, but specific projections as to capital growth are not permissible, taking into account the many variables influencing property values; and
 - (iii) whether the validity of the assumptions used in determining projections is based on fact or opinion.
- (b) Should a specific return be projected, it should be calculated with reference to the syndication value.
- (13)(a) The name of the valuer and his or her qualifications and experience must be disclosed.
- (b) The valuer must take cognisance of the state of repair and condition of buildings and improvements.
- (c) The valuer must take cognisance of the municipal valuation of the property concerned.
- (d) For purposes of paragraph (e) -
- (i) "open market value" contemplated in paragraph (d)(ii) means the best price at which the property might reasonably be expected to have been sold unconditionally for a cash consideration on the date of valuation assuming -
 - (aa) a willing and informed seller and a willing and informed buyer who are not connected persons as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991); and
 - (bb) that, prior to the date of valuation, there has been a reasonable period, having regard to the nature of the property and the state of the market, for the proper marketing of the interest, for the agreement of price and terms and for the completion of the sale; and
 - (cc) that no account is taken of any additional bid by a purchaser with a special interest.
 - (ii) "syndication value" contemplated in paragraph (d)(ii) is the aggregate sum of the shareholders' total interest in the syndication vehicle in terms of the

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disclosure document, recognising that this sum includes an appropriate premium over and above the open market value of the property asset, and the quantum of the premium must be stated.

- (e) A report from a valuer for purposes of subregulation (3) must incorporate -
 - (i) an introduction, stating that the valuer has been instructed by the promoter or whoever instructed the valuer and that such valuer has a valid professional indemnity policy, as well as the amount of such cover;
 - (ii) the valuation undertaken by the valuer, which must be either an open market value or syndication value;
 - (iii) the title deed description;
 - (iv) municipal information such as town planning regulations and the municipal valuation of the land and improvements;
 - (v) the location of the property;
 - (vi) a brief description of the building, such as the method of construction, materials, type, grade and size;
 - (vii) the insurance replacement cost of the building in accordance with the following definition: The estimated cost of replacing the asset, as it exists, as if new, at prices applicable on the valuation date, inclusive of professional fees, but exclusive of any finance charges, demolition costs or emergency services costs;
 - (viii) tenancy details, including names of tenants, rentable areas occupied and or vacant, rental escalations, and lease expiry dates;
 - (ix) expenses such as the level of anticipated initial annual operating expenses and the rate of collection/commission;
 - (x) the net income, the anticipated net rental income in the first year and comments on any unusual growth or anticipated vacancies in the next three years, and what assumptions are made as to the re-letting of space over which leases are expiring or are vacant, including anticipated re-letting commission and tenant installation costs;
 - (xi) the capitalisation rate, meaning the appropriate rate at which the market net income is capitalised, and evidence to this effect;
 - (xii) valuations of the property as at a date, which must be not more than three calendar months before date of the offer, stating whether the open market