



REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

---

## STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

*Registered at the Post Office as a Newspaper*

*As 'n Nuusblad by die Poskantoor Geregistreer*

---

Vol 394

CAPE TOWN. 24 APRIL 1998

**No. 18857**

KAAPSTAD. 24 APRIL 1998

---

OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

No. 615. 24 April 1998

It is hereby notified that the President has assented to the following Act which is hereby published for general information.—

No.14 of 1998: Stock Exchanges Control Amendment Act. 1998.

No. 615. 24 April 1998

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 14 van 1998: Wysigingswet op Beheer van Aandele beurse. 1998.

GENERAL EXPLANATORY NOTE:

[                    ] Words in bold type in square brackets indicate omissions from existing enactments.

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

---

---

# ACT

To amend the Stock Exchanges Control Act, 1985, so as to amend the definition of “stock-broker”; to further regulate restrictions on the management of investments; to regulate the use of the designation “stock-broker”; to delete an obsolete reference; to further regulate undesirable advertising or canvassing relating to securities; to dispense with the requirement that the Registrar must approve the appointment of auditors; to extend the matters which may be disclosed by a stock exchange; to amend certain provisions relating to penalties; and to extend the limitation on the liability of certain persons to a stock exchange and clearing house; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 1 of 1985, as amended by section 14 of Act 50 of 1986, section 24 of Act 51 of 1988, section 25 of Act 54 of 1989, section 38 of Act 55 of 1989, section 13 of Act 64 of 1990, section 29 of Act 97 of 1990, section 10 of Act 54 of 1991, section 56 of Act 104 of 1993, section 1 of Act 54 of 1995 and section 1 of Act 71 of 1996** 5

1. Section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985) (hereinafter referred to as the principal Act), is hereby amended by the substitution in subsection (1) for the definition of “stock-broker” of the following definition: 10

“ ‘stock-broker’ means any natural person who is a member or who is an officer or employee of a member, and who is authorised and qualified under the rules of the stock exchange concerned to be a stock-broker **[and to carry on the business of the member]**.”

**Amendment of section 4 of Act 1 of 1985, as substituted by section 4 of Act 54 of 1995** 15

2. Section 4 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) No person **[shall]** may, as a regular feature of his or her business, undertake the management of investments on behalf of another person, and for such management receive any remuneration in whatever form, **[other** 20

than fees charged by a member for the buying and selling of securities] unless he or she—

- (a) **[is a member authorised in terms of the rules to manage investments on behalf of another person]** is a person who has been approved by the Registrar or is a person who falls within a category of persons approved by the Registrar; 5
- (b) has a written mandate to do so from the other person; and
- (c) complies with such conditions as the Registrar may from time to time determine by notice in the *Gazette*, which conditions may—
- (i) prohibit the management of investments referred to in subparagraphs (ii) and (iv) of the definition of ‘investments’ in subsection (7), if such investments are not subject to a regulatory regime deemed adequate by the Registrar for the protection of investors; and 10
  - (ii) differ in respect of different groups or types of investment managers.”; 15
- (b) by the insertion after subsection (1) of the following subsection:  
 “(1A) Subsection (1) does not apply to a member authorised in terms of the rules to manage investments on behalf of another person or a company which is registered as a management company in terms of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981).”; 20
- (c) by the substitution in subsection (6) for subparagraph (iv) of paragraph (a) of the following subparagraph:  
 “(iv) of a trust as defined in section 1 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), created *inter vivos*, but not a business trust, and he or she is the trustee concerned or a person administering such trust on behalf of that trustee; or”; and 25
- (d) by the substitution for subsection (7) of the following subsection:  
 “(7) For the purposes of this section— 30
- (a) ‘investments’ means—
- (i) securities **[whether listed or unlisted, or]** listed on a stock exchange; 30
  - (ii) securities listed on a foreign exchange; 35
  - (iii) units in a unit portfolio as defined in section 1 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or units or any other form of participation in a collective investment scheme approved by the Registrar of Unit Trust Companies in terms of that Act; 35
  - (iv) units or any other form of participation in a collective investment scheme licensed or registered in a foreign country; 40
  - (v) any other instruments declared to be **[such]** investments for the purposes of this section by the Registrar by notice in the *Gazette*; or 40
  - (vi) funds intended for the **[purpose of buying such]** purchase of such securities, units, participation or other instruments; 40
- (b) ‘management of investments’ means—
- (i) **[in the case of a member, means]** the buying, **[and]** selling **[of listed or unlisted securities]** or otherwise dealing with investments on behalf of another person **[in terms of an unlimited mandate to act on behalf of such other person; or];** 45
  - (ii) **[in the case of a person who is not a member, means the buying and selling of listed and unlisted securities on behalf of another person in terms of any mandate whether limited or unlimited, to act on behalf of such other person]** an offer or agreement regarding such buying, selling or dealing, irrespective of whether an investment manager is required to exercise his, her or its discretion; or 50
  - (iii) the implementation on behalf of another person of a decision to buy, sell or deal with investments, 55
- but not—

- (aa) the giving of advice on the merits of such transactions without receiving funds or assets from a client; or
- (bb) the performance of the functions of a company or institution which is registered as trustee under the Unit Trusts Control Act, 1981 (Act No. 54 of 1981); and
- (c) [**‘an unlimited mandate’ means a mandate to act on behalf of another person without it being necessary to obtain further authority or consent from such other person to effect any transaction in securities under such mandate**] **‘business trust’ means a trust *inter vivos* created for the purpose of carrying on a business for profit-making, which purpose is achieved through the combination of capital contributed by the beneficiaries themselves and through the administration or management of the capital by trustees on behalf of and for the benefit of the beneficiaries.**”.

**Amendment of section 12 of Act 1 of 1985, as amended by section 29 of Act 51 of 1988, section 38 of Act 55 of 1989, section 12 of Act 7 of 1993, section 59 of Act 104 of 1993 and section 12 of Act 54 of 1995**

3. Section 12 of the principal Act is hereby amended by the substitution in subsection (1) for subparagraph (i) of paragraph (d) of the following subparagraph:

- “(i) may carry on the business referred to in section 4 unless authorised to do so in terms of the rules [**and unless he complies with the provisions of section 4**];”.

**Insertion of section 15 in Act 1 of 1985**

4. The following section is hereby inserted in the principal Act after section 14:

**“Use of designation ‘stock-broker’ and related designations**

**15. (1) A stock-broker may use the designation ‘stock-broker’, ‘stock-broker (South Africa)’ or ‘stock-broker (S.A.)’.**

(2) No person who is not a stock-broker may—

- (a) hold himself or herself out as, or allow himself or herself to be held out as, a stock-broker; or
- (b) use any designation referred to in subsection (1) or any other name, title, description or symbol, or perform any act, implying or tending to induce the belief that he or she is a stock-broker.

(3) Any person to whom the rules of a foreign stock exchange recognised by the Registrar by notice in the *Gazette* apply, and whose business is substantially similar to that of a stock-broker in terms of this Act, may use any designation referred to in subsection (1), provided that the country where the designation was obtained is indicated after the designation.”.

**Amendment of section 22 of Act 1 of 1985, as substituted by section 22 of Act 54 of 1995**

5. Section 22 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

- “(5) In determining the amount paid or owing by any buyer to a member for the purposes of this section, the purchase price payable in respect of the listed securities sold by the member on behalf of the buyer or the purchase price payable by the member to the buyer for listed securities sold by the buyer to the member but not yet delivered to the member, [**as well as any funds or listed securities deposited with a member in terms of the rules for the purposes of a bear sale**] shall not be taken into account.”.

**Amendment of section 39 of Act 1 of 1985, as substituted by section 36 of Act 54 of 1995 and amended by section 10 of Act 71 of 1996**

6. Section 39 of the principal Act is hereby amended—

- (a) by the insertion after subsection (1) of the following subsection: 5  
 “(1A) (a) No person other than a member of a foreign stock exchange recognised by the Registrar for the purposes of this section by notice in the *Gazette*, an officer or employee of such a member, such a foreign stock exchange or an employee of such a foreign stock exchange, may in any matter or by any means, either for himself, herself or for any other person, directly or indirectly advertise or canvass for any business relating to the buying and selling of securities listed on a foreign stock exchange so recognised. 10  
 (b) No person may in any matter or by any means, either for himself, herself or for any other person, directly or indirectly advertise or canvass for any business relating to the buying and selling of securities listed on a foreign stock exchange not recognised by the Registrar in terms of paragraph (a).”; 15
- (b) by the substitution for subsection (2) of the following subsection: 15  
 “(2) No person other than a person approved by the Registrar in terms of section 4(1) [**shall in any matter**] or exempted from the provisions of that section by section 4(1A), may by any means [**either for himself or for any other person, directly or indirectly**] advertise or canvass for or market the business referred to in section 4(1).”; and 20
- (c) by the insertion after subsection (2) of the following subsections: 25  
 “(2A) (a) No person may, without the approval of the Registrar, advertise or canvass for or market the business referred to in section 4(1), carried on outside the Republic. 25  
 (b) The Registrar may grant the approval referred to in paragraph (a) subject to such conditions as may be necessary for the protection of investors. 25  
 (2B) An advertisement, marketing material or any other means of marketing contemplated in subsections (2) and (2A) shall comply with the requirements determined by the Registrar by notice in the *Gazette*.”. 30

**Amendment of section 42 of Act 1 of 1985, as substituted by section 38 of Act 54 of 1995 and amended by section 11 of Act 71 of 1996**

7. Section 42 of the principal Act is hereby amended—

- (a) by the deletion of subsections (3) and (4); and 35  
 (b) by the substitution for subsections (5), (6) and (7) of the following subsections, respectively: 35  
 “(5) When [**the Registrar has in terms of subsection (4) refused to approve or has withdrawn his approval of the appointment of an auditor, or whenever for any other reason**] an auditor vacates his or her office as auditor of a member or stock exchange, the member concerned or stock exchange in question shall appoint [**some other**] another person as auditor [**but again subject to the approval of the Registrar**]. 40  
 (6) Where the auditor of a member or stock exchange is a partnership, such auditor shall for the purposes of subsection (5) be deemed not to have vacated [**his**] its office by reason of a change in the composition of the partnership, as long as not less than half the number of the partners in the reconstituted partnership are persons who were, as at the date when the appointment of the partnership as auditor was [**last approved by the Registrar**] made, partners therein. 45  
 (7) If an auditor who has been removed from office by a member or stock exchange is of the opinion that such removal was for improper reasons, such auditor shall forthwith inform the Registrar thereof by facsimile or by registered post.”. 50

**Substitution of section 45A of Act 1 of 1985, as inserted by section 42 of Act 54 of 1995**

8. The following section is hereby substituted for section 45A of the principal Act:

**“Disclosure of information by stock exchange**

**45A.** Notwithstanding the provisions of any other law, a stock exchange may enter into an agreement with any other exchange or organisation of stock exchange supervisors, whether domestic or foreign, to disclose information relating to a security, a company whose securities are listed on an exchange, a particular transaction, a member, an officer or employee of a member or a buyer and seller of listed securities, if such information will be of importance to the relevant [domestic or foreign] exchange or organisation of stock exchange supervisors and the disclosure will not be against the public interest.”

**Amendment of section 48 of Act 1 of 1985, as substituted by section 45 of Act 54 of 1995 and amended by section 14 of Act 71 of 1996**

9. Section 48 of the principal Act is hereby amended—

(a) by the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(d) contravenes or fails to comply with a provision of section 19(3), 36, 37, 39 or 42(1), (2) [(3), (4)] or (5);”;

(b) by the substitution for paragraph (h) of subsection (1) of the following paragraph:

“(h) contravenes a provision of section 15(2) or (3), 40 or 41.”.

**Substitution of section 52A of Act 1 of 1985, as substituted by section 15 of Act 71 of 1996**

10. The following section is hereby substituted for section 52A of the principal Act:

**“Limitation of liability**

**52A.** No stock exchange, clearing house, executive officer, employee or representative of a stock exchange or clearing house, or any member of a committee or subcommittee of the committee, shall be liable for any loss sustained by or damage caused to any person as a result of anything done or omitted by the stock exchange, clearing house, executive officer, employee, representative or member in the *bona fide* or negligent, but not grossly negligent, exercise of any power or carrying out of any duty or performance of any function under or in terms of this Act or the rules.”.

**Short title and commencement**

11. This Act shall be called the Stock Exchanges Control Amendment Act, 1998, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.