



REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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## STAATSKOERANT

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OFFICE OF THE PRESIDENT

No. 1517.

4 October 1995

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

No. 54 of 1995: Stock Exchanges Control Amendment Act, 1995.

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KANTOOR VAN DIE PRESIDENT

No. 1517.

4 Oktober 1995

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

No. 54 van 1995: Wysigingswet op Beheer van Effektebeurse, 1995.

**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.
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# ACT

To amend the Stock Exchanges Control Act, 1985, so as to insert, amend or delete certain definitions; to further regulate the delegation of powers and assignment of duties by committees of stock exchanges; to make further provision for the carrying on of the business of a stock exchange and the buying and selling of listed securities; to make provision for the managing of investments; to regulate anew the issue and renewal of stock exchange licenses; to make further provision for the contribution to and distribution of funds of a stock exchange; to make further provision for the rules of a stock exchange; to make provision for a limitation on the financial interest of the president of a stock exchange; to provide for the separation of the funds of a member and of other persons; to further regulate the committee's duties in relation to the listing of securities; to further regulate the disclosure of information by issuers of securities which are listed; to further regulate rights of appeal against certain decisions, and the powers of boards of appeal in connection therewith; to make further provision for the buying of securities for payment, or otherwise than for payment, against the offer of delivery of such securities; to make further provision for the signing of certain forms for purposes of transferring securities; to make further provision for the sale of securities otherwise than by means of a bear sale; to provide that the Minister of Finance may prescribe different or additional provisions for delivery of and payment for listed securities; to make further provision for limitations and qualifications in respect of the purchasing or selling of securities, and repudiations thereof; to make further provision for the prohibition of bear sales by certain directors and shareholders; to make further provision for the establishment and maintenance of a guarantee fund in respect of liabilities of members; to further regulate the marking of securities; to further regulate the restriction on borrowing against and the repledging of securities of non-members; to further regulate advertising and canvassing relating to securities; to further regulate manipulative practices; to make further provision for the appointment of auditors, and for the auditing and the reporting of irregularities by such auditors; to make further provision for the inspection of non-approved or unlicensed persons; to provide for the disclosure of information by stock exchanges to other domestic or to foreign exchanges; to further regulate the powers of the Registrar in attending certain meetings and the furnishing of certain information to him; to improve and extend certain provisions relating to penalties; to further regulate the power of courts to declare certain convicted members disqualified; to provide for the limitation of certain liabilities; and to delete redundant and obsolete provisions; to provide that the Stock Exchanges Control Act, 1985, shall apply throughout the Republic; and to provide for matters connected therewith.

(English text signed by the President.)  
(Assented to 28 September 1995.)

**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 29 of Act 97 of 1990, section 13 of Act 64 of 1990, section 10 of Act 54 of 1991 and section 56 of Act 104 of 1993 5

1. Section 1 of the Stock Exchanges Control Act, 1985 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the substitution for the definition of “bank” of the following definition:
  - “‘bank’ means any bank as defined in the Banks Act, 1990 (Act No. 94 of 1990);”;
- (b) by the substitution for the definition of “bear sale” of the following definition:
  - “‘bear sale’ means the sale of listed securities of which the seller is not the owner at the date of sale;”;
- (c) by the deletion of the definitions of “carrier against shares” and “cash sale price”; 15
- (d) by the insertion before the definition of “committee” of the following definition:
  - “‘carrying on the business of a stock exchange’ includes the carrying on of a business by any person or association which constitutes, maintains or provides a marketplace, system or facility for bringing together buyers and sellers of securities;”;
- (e) by the substitution for the definition of “committee” of the following definition:
  - “‘committee’ [in relation to a stock exchange] means the [executive authority] governing body managing the affairs of [that] the stock exchange;”;
- (f) by the deletion of the definition of “licensed stock exchange”; 20
- (g) by the insertion after the definition of “listed securities” of the following definition:
  - “‘member’ means any person who is qualified in terms of the rules to carry on the business of buying and selling listed securities and who has been admitted as a member of a stock exchange;”;
- (h) by the deletion of the definition of “minimum cover”; 25
- (i) by the deletion of the definition of “odd-lot transaction”; 30
- (j) by the insertion after the definition of Minister of the following definition:
  - “‘person includes a partnership;”;
- (k) by the insertion after the definition of “regulation” of the following definition:
  - “‘rule’ means a rule made under section 12;”;
- (l) by the substitution for the definition of “stock-broker” of the following definition:
  - “‘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;”;
- (m) by the substitution for the definition of “stock exchange” of the following definition:
  - “‘stock exchange’ means any association licensed in terms of section 9 to carry on the business of a stock exchange;”;
- (n) by the deletion of the definition of “stock exchange licence”; 45
- (o) by the insertion after the definition of “stock exchange” of the following definition: 50

- “ ‘the Act’ or ‘this Act’ includes the regulations;”; and
- (p) by the addition of the following subsection, the existing section becoming subsection (1):
- “(2) In construing the definition of “bear sale”, listed securities which are borrowed shall be deemed not to become the property of the borrower.”.

**Substitution of section 2A of Act 1 of 1985, as inserted by section 26 of Act 51 of 1988 and amended by section 29 of Act 97 of 1990 and section 11 of Act 54 of 1991**

2. The principal Act is hereby amended by the substitution for section 2A of the following section:

**“Delegation of powers and assignment of duties**

2A. The committee may—

- (a) subject to such conditions as it may determine, delegate or assign any power or duty conferred upon or assigned to it by or under this Act to a subcommittee or such person as it deems fit, but shall not thereby be divested or relieved of any power or duty so delegated or assigned; and
- (b) delegate to a disciplinary tribunal to be established in terms of the rules the power to hear and adjudicate any complaint or charge against a member or an officer or employee of a member and, where appropriate, to impose any penalty.”.

**Substitution of section 3 of Act 1 of 1985, as amended by section 15 of Act 50 of 1986, section 27 of Act 51 of 1988, section 26 of Act 54 of 1989 and section 38 of Act 55 of 1989**

3. Section 3 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:
- “Restriction on right to carry on business of stock exchange or of buying and selling listed securities”;**
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) No person shall carry on the business of buying and selling listed securities unless—
- (a) (i) in the case of such buying and selling on behalf of other persons, or
- (ii) in the case of such buying and selling on own account, he is a member or is an officer or employee of a member, and is authorised under the rules to do such buying and selling; or
- (b) he is an officer or employee of a bank and such buying and selling is effected in the course of the bank’s business and in accordance with such conditions as the Registrar may from time to time determine by notice in the *Gazette*, and is restricted to transactions entered into—
- (i) to give effect to a reconstruction of a company by the issue of new shares or a take-over by one company of another or a merger of two or more companies; or
- (ii) with a view to the taking over of a company as regards control of its management, policy or business; or
- (c) he effects such buying and selling through a member if he is not a member or an officer or employee referred to in paragraphs (a) or (b).”;
- (c) by the deletion of subsections (5) and (6);
- (d) by the substitution in paragraph (a) of subsection (7) for the words preceding subparagraph (i) of the following words:
- “a person shall not be deemed to be carrying on the business of buying and selling listed securities unless, in the opinion of the Registrar—”;
- (e) by the deletion of paragraph (b) of subsection (7); and
- (f) by the deletion of subsection (8).

**Substitution of section 4 of Act 1 of 1985, as amended by section 9 of Act 7 of 1993 and section 57 of Act 104 of 1993**

4. The following section is hereby substituted for section 4 of the principal Act:

**“Restrictions on managing investments**

4. (1) No person shall, as a regular feature of his business, manage investments on behalf of another person, and for such management receive any remuneration in whatever form, other than fees charged by a member for the buying and selling of securities, unless he—

- (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;
- (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*.

(2) The provisions of section 14 shall apply *mutatis mutandis* to any person approved in terms of subsection (1).

(3) Every application for approval referred to in subsection (1) shall be made in the prescribed manner and shall be accompanied by the prescribed application fee.

(4) The Registrar may grant an applicant the approval referred to in subsection (1) if—

- (a) the applicant is of good character and integrity, or in the case of a corporate body, is managed and controlled by persons who are of good character and integrity;
- (b) the applicant complies, or in the case of a corporate body is managed by persons or employs persons who comply, with the standards of training and experience and other qualifications required by the Registrar by notice in the *Gazette*;
- (c) the applicant complies with the capital adequacy standards determined by the Registrar by notice in the *Gazette*;
- (d) the applicant has made adequate arrangements for the safe custody of securities; and
- (e) the applicant undertakes to pay the prescribed annual levy.

(5) The Registrar may withdraw approval granted in terms of subsection (4) if the approved person fails to comply with the requirements contemplated in subsections (1) and (4).

(6)(a) For the purposes of subsection (1) it shall be deemed that the managing of investments is not a regular feature of the business of any person if such investments form part of the assets—

- (i) in any deceased or insolvent estate, and he is the executor, administrator or trustee concerned or is a person administering or winding up such estate on behalf of that executor, administrator or trustee; or
- (ii) of any person under curatorship, and he is the curator concerned or is administering such estate on behalf of that curator; or
- (iii) of a company in liquidation or under judicial management, and he is the liquidator or judicial manager concerned or a person liquidating or managing such company on behalf of that liquidator or judicial manager; or
- (iv) of a trust *inter vivos*, and he is the trustee concerned or a person administering such trust on behalf of that trustee; or
- (v) of a minor, and he is the guardian concerned or a person administering such investments on behalf of that guardian.

(b) If in any instance contemplated in paragraph (a) it is a regular feature of the business of a person acting on behalf of such executor, administrator, trustee, curator, liquidator, judicial manager or guardian to manage investments, such person shall obtain approval from the Registrar in terms of subsection (1).

(7) For the purposes of this section—

- (a) 'investments' means securities, whether listed or unlisted, or any other instruments declared to be such by the Registrar by notice in the *Gazette*, or funds intended for the purpose of buying such securities or instruments; 5
- (b) 'management of investments'—
  - (i) in the case of a member, means the buying and selling of listed or unlisted securities on behalf of another person in terms of an unlimited mandate to act on behalf of such other person; or
  - (ii) in the case of a person who is not a member, means the buying and selling of listed or unlisted securities on behalf of another person in terms of any mandate, whether limited or unlimited, to act on behalf of such other person; and 10
- (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." 15

#### Repeal of section 6 of Act 1 of 1985

5. Section 6 of the principal Act is hereby repealed.

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#### Substitution of section 7 of Act 1 of 1985, as amended by section 38 of Act 55 of 1989, section 10 of Act 7 of 1993 and section 58 of Act 104 of 1994

6. The following section is hereby substituted for section 7 of the principal Act:

##### "Stock exchange licence

7. (1) A stock exchange licence shall be issued or renewed by the Registrar. 25

(2) Any such licence shall expire on 31 December of the year for which it is issued, but may be renewed from year to year.

(3) The prescribed licence fee shall be payable in respect of the issue or renewal of any such licence: Provided that if the liability in respect of the issue of such licence arises after 30 June in any year, one-half of that fee shall be payable for such issue." 30

#### Substitution of section 8 of Act 1 of 1985, as amended by section 38 of Act 55 of 1989

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

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##### "Application for issue or renewal of stock exchange licence

8. (1) Notwithstanding the provisions of section 30 of the Companies Act, 1973 (Act No. 61 of 1973), ten or more persons may form an association to carry on the business of a stock exchange, and the association may apply to the Registrar to issue to the association a stock exchange licence or to renew any such licence. 40

(2) Every application relating to the issue or renewal of a stock exchange licence shall—

- (a) be made in the prescribed manner; and
- (b) be accompanied by the prescribed application fee; and 45
- (c) in the case of an application for the issue of any such licence, also be accompanied by five copies of the proposed rules.

(3) The Registrar shall advertise every application for the issue of a stock exchange licence in two national newspapers in any two official languages (one of which shall be English) at the expense of the applicant. 50

(4) The advertisement shall state—

- (a) the name of the applicant;
- (b) the place where the rules of the applicant will be available for inspection by any member of the public; and
- (c) the period within which any objections to the issue of the licence may be lodged with the Registrar.”.

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**Substitution of section 9 of Act 1 of 1985, as amended by section 11 of Act 7 of 1993**

8. The following section is hereby substituted for section 9 of the principal Act:

**“Issue of stock exchange licence**

9. (1) On the expiry of the period contemplated in section 8(4)(c) the Registrar may, after consideration of any objection lodged with him under the said section, issue a stock exchange licence to the association contemplated in section 8(1) if—

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(a) the association has sufficient financial resources for the proper exercise or carrying out of the powers and duties conferred upon or assigned to a stock exchange by or under this Act;

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(b) the proposed rules comply with the requirements of this Act;

(c) the interests of the public would be served by the issue of the licence; and

(d) the association comprises at least ten members who will carry on business as buyers and sellers of listed securities independently of and in competition with one another.

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(2) The stock exchange licence shall specify the place at which or the trading method or facility by means of which the business of the stock exchange may be carried on, and that business shall not be carried on at any other place or in any other manner without the prior approval of the Registrar.”.

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**Substitution of section 10 of Act 1 of 1985, as amended by section 38 of Act 55 of 1989**

9. The following section is hereby substituted by section 10 of the principal Act:

**“Refusal of renewal of stock exchange licence**

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10. (1) The Registrar may refuse to renew a stock exchange licence if during the year preceding the year for which the licence is to be renewed—

(a) the rules of the stock exchange concerned were not properly enforced;

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(b) the provisions of section 9(1)(a), (c) or (d) no longer applied to the stock exchange concerned;

(c) the stock exchange concerned did not comply with any other provision of this Act;

(d) the stock exchange concerned did not comply with any written direction, request, condition or requirement of the Registrar in respect of which an appeal had been noted by the Registrar in terms of section 20(2A) and upheld by the board referred to in section 21; or

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(e) the stock exchange concerned failed to give effect to a decision of the board referred to in section 21.

(2) The Registrar shall not refuse to renew a stock exchange licence on any grounds unless he has furnished the association concerned with the reasons for his proposed refusal and the association has had the opportunity to show cause within a period specified in a notice by the Registrar to the association why such renewal should not be refused.”.

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**Amendment of section 11 of Act 1 of 1985, as amended by section 16 of Act 50 of 1986**

10. Section 11 of the principal Act is hereby amended—

- (a) by the deletion of subsections (2), (3), (4) and (5); and
- (b) by the substitution for subsection (6) of the following subsection:
  - “(6) A stock exchange [incorporated in terms of this section and] which ceases to be a licensed stock exchange, shall be dissolved in terms of its rules.”.

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**Insertion of section 11A of Act 1 of 1985**

11. The following section is hereby inserted in the principal Act after section 11:

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**“Funds of stock exchange**

**11A. (1)** The committee may require members to contribute towards the funds of the stock exchange as a contribution towards carrying on the business of such stock exchange.

(2) Notwithstanding the provisions of any law or the common law and without affecting its status as a non-proprietary stock exchange, the committee may—

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- (a) if such stock exchange has assets which are surplus to its requirements;
- (b) after making appropriate and proper provision for any liabilities of such stock exchange;
- (c) with the approval of its members in terms of the constitution of such stock exchange; and
- (d) with the written consent of the Registrar, resolve to distribute such surplus assets to members, past members and persons who were stock-brokers prior to the commencement of the Stock Exchanges Control Amendment Act, 1995, whether upon a restructuring of such stock exchange or otherwise.”.

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**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 and section 59 of Act 104 of 1994**

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12. Section 12 of the principal Act is hereby amended—

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

“(1) Subject to the provisions of this Act, the rules of a stock exchange shall be so designed as to ensure—

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- (a) that its affairs are managed by a committee, and shall make provision for the establishment, composition and functions of that committee;
- (b) that adequate provision is made for the implementation of section 11A;
- (c) that no person is admitted as a member or allowed to continue as a member unless he—
  - (i) is of good character and integrity, or in the case of a corporate body is managed and controlled by persons who are of good character and integrity;
  - (ii) complies, or in the case of a corporate body is managed by persons or employs persons who comply, with the standards of training and experience and other qualifications required in terms of the rules; and
  - (iii) employs the number of stock-brokers required in terms of the rules;
- (d) that no member—
  - (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;
  - (ii) may effect a transaction in securities with a person who such member reasonably believes requires approval in terms of

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- section 4, without having taken reasonable measures to ascertain that such person has the necessary approval;
- (e) that no person may act as a stock-broker unless he complies with the minimum qualifications required in terms of the rules;
- (f) (i) that no officer or employee of a member may advise on or conclude any transaction on behalf of such member in the course of that member's business in relation to the buying or selling of listed securities, unless authorised by the rules; 5  
(ii) that no member may employ any person unless such person has entered into a written agreement with the member in terms of which the person agrees to comply with the provisions of the Act, the rules, the directives and code of conduct of the stock exchange concerned; 10
- (g) (i) that the manner in and the terms and conditions under which members may trade in listed securities; and 15  
(ii) that the requirements for the adequate disclosure of information relating to members' transactions with buyers and sellers of listed securities, are consistent with efficiency, honesty and fair practice in relation to such trading; 20
- (h) that members are obliged to ensure that buyers and sellers of listed securities are aware of their material obligations in terms of the Act and the rules;
- (i) that trading in any listed security may be halted for such period as the committee may deem necessary in the public interest or for the purposes of market stability; 25
- (j) that provision is made for disclosure, when appropriate, to members or to buyers or sellers of listed securities or for other requirements when effecting a bear sale;
- (k) that provision is made for the committee to settle with another member on behalf of a member who has failed to settle after due notice to such member, on application by a member who bought or sold listed securities from or to such defaulting member; 30
- (l) that provisions are made for the delivery of securities pursuant to a transaction, for settlement of a transaction and for ancillary provisions arising from such transactions; 35
- (m) that provisions are made for the circumstances and conditions under which—  
(i) credit may be granted by a member to any other person;  
(ii) a member may lend or borrow securities to or from any other person; 40  
(iii) a member may pledge or repledge securities belonging to any other person;
- (n) (i) that adequate capital or guarantees be required from members for all their activities; 45  
(ii) that no person be admitted as or allowed to continue to be a member, unless at the time of such person's admission and thereafter while the person remains a member the person complies with the capital or guarantee requirements made in terms of the rules; 50  
(iii) that the capital or guarantee requirements of members are reviewed when appropriate to ensure that risk exposures of a member are adequately covered;
- (iv) that different capital or guarantees be required from different categories of members or for different activities of a member's business; 55
- (o) that adequate provision is made for the operation of the trust account referred to in section 14 and for the circumstances under which funds shall be paid into and withdrawn from such trust account; 60
- (p) that every transaction note to the buyer or seller of listed securities discloses the date and time at which the transaction was effected and

- whether such transaction was effected in the capacity of principal or agent, and where appropriate, the name of the stock-broker or officer or employee of the member who concluded the transaction;
- (q) that provision may be made for different categories of members, for different classes of membership and for the admission of a person to restricted membership of a stock exchange under different conditions; 5
- (r) (i) that complaints against any member or officer or employee of a member are adequately investigated; 10
- (ii) that adequate steps are taken for the investigation and discipline of any member or officer or employee of a member who contravenes or fails to comply with the provisions of this Act or the rules; 15
- (iii) that the membership of a member is not terminated on any grounds in respect of which that member has not had an opportunity of making representations to the committee or to the disciplinary tribunal contemplated in section 2A(b) which terminated that member's membership; 20
- (iv) that any stock-broker, practising as such, is not prevented from so practising on any grounds in respect of which he has not had an opportunity of making representations to the committee or to the disciplinary tribunal contemplated in section 2A(b), or to any association of which the stock-broker is obliged to be a member in terms of the rules, as the case may be; 25
- (v) that a member shall not be directed to terminate the employment of an officer or employee on any grounds in respect of which that officer or employee has not had an opportunity of making representations to the committee or disciplinary tribunal contemplated in section 2A(b) which made the decision; 30
- (vi) that any member, stock-broker, officer or employee who has made representations as contemplated in subparagraphs (iii), (iv) and (v), shall be entitled to be supplied with a copy of a record of the relevant proceedings of the meeting to which that member, stock-broker, officer or employee made such representations; and 35
- (vii) that the committee or the disciplinary tribunal contemplated in section 2A(b), as the case may be, may, upon good cause shown and subject to such conditions as it may impose, vary or modify any sentence which it may previously have imposed upon any person provided that in modifying or varying such sentence, the committee or such tribunal shall under no circumstances increase such sentence; 40
- (s) that provision is made for the conditions under which a member may establish— 45
- (i) a company, the main object of which is to register securities on behalf of such member or on behalf of buyers and sellers of securities, and for the objects and powers of such a company;
- (ii) such other company as may be permitted in terms of the rules;
- (t) that any qualifying requirement to be held by any person in order to be admitted as a member is available for acquisition by any applicant for admission at not more than the price stated in the rules; 50
- (u) that the committee may be entitled to impose a levy on every member to the fund referred to in section 30 on all transactions in listed securities effected on a stock exchange, and that where a member has effected a transaction on behalf of a buyer or seller of listed securities, such member may recover such levy from such buyer or seller; 55
- (v) that members may negotiate fees for their services;
- (w) that adequate systems will be maintained— 60

- (i) for recording transactions effected on a stock exchange;
- (ii) for monitoring compliance by members with the provisions of this Act, the rules or with any arrangements made with a recognised clearing house for the provision of services and facilities;
- (iii) for surveillance of any matter relevant for the purposes of this Act and the rules; and
- (iv) for the clearing, netting or settlement of transactions;
- (x) that a member—
- (i) marks documents or records details of title to securities, whether listed or unlisted, with the name of the person entitled to such securities;
- (ii) acts strictly in accordance with the rules regulating the granting of credit, the lending of securities, whether listed or unlisted, and the borrowing, pledging or repledging of securities, whether listed or unlisted, belonging to buyers or sellers of securities;
- (iii) issues receipts for any securities, whether listed or unlisted, received for safe custody; and
- (iv) holds and delivers securities, whether listed or unlisted, in accordance with instructions of the person entitled thereto;
- (y) that a member may advertise or canvass for work subject to the provisions of the rules;
- (z) that provision is made for the manner in which a stock exchange shall be dissolved or restructured; and
- (zA) generally, that the business of the member and the stock exchange is carried on with due regard to the public interest.”;
- (b) by the deletion of subsections (2) and (3);
- (c) by the substitution for subsections (4), (5), (6), (7), (8) and (9) of the following subsections, respectively:
- “(4) The Registrar shall as soon as [may be] possible after he has [granted a certificate authorizing the issue of] issued a stock exchange licence, cause the rules of the stock exchange concerned to be published in the *Gazette* in [both] any two official languages (one of which shall be English) and at the expense of the stock exchange concerned.
- (5)(a) No addition to, or amendment or [alteration] rescission (other than a suspension) of the rules [of an association which is a holder of a stock exchange license] shall be valid unless [it has, on application by such association and on]—
- (i) payment [by it] of the prescribed fee has been made;
- (ii) it has been approved by the Registrar in writing; and [if he approves thereof]
- (iii) a date has been specified in the Registrar’s approval for the coming into operation of such addition, amendment or [alteration] rescission [shall come into operation on a date mentioned in the approval].
- (b) The Registrar shall, after considering any objection contemplated in subsection (7), approve or disapprove an addition, amendment or rescission referred to in paragraph (a) within a period of two months after the expiry of the period referred to in that subsection.
- (c) If the Registrar does not disapprove of an addition to, amendment or [alteration] rescission of the rules referred to in paragraph (a) within a period of two months after the expiry of the period referred to in subsection (7), he shall be deemed to have approved thereof, and such addition, amendment or [alteration] rescission shall come into operation on the day immediately following upon the date of expiry of the aforesaid period of two months.
- (6) Upon receipt of an application for his approval under subsection (5) the Registrar shall cause to be published at the expense of the [association] stock exchange, in [both] any two official languages (one of which shall be English) in the *Gazette*, a notice setting forth the proposed additions, amendments or [alterations] rescissions of the rules.
- (7) The said notice shall call upon all interested persons (other than

members of the stock exchange concerned) who have any objections to the proposed additions, amendments or [alterations] rescissions, to lodge their objections with the Registrar within a period of 30 days from the date of publication of the notice in the *Gazette*.

(8) Whenever [the Registrar deems it desirable] it is in the public interest, [he] the Registrar may, after consultation with the committee [of a licensed stock exchange] and with the consent of the Minister, by notice in the *Gazette* [amend] add to, amend or rescind the rules of such stock exchange with effect from the date immediately following upon the date of publication of the notice or such later date as may be specified therein.

(9) (a) Subject to the prior approval of the Registrar, the committee [of a licensed stock exchange] may suspend any of [its] the rules of the stock exchange concerned for a period not exceeding 30 days at a time after notice of the proposed suspension has been advertised in the *Gazette*.

(b) The Registrar may, for the period of such suspension, issue an interim rule in terms of subsection (8) to regulate the matter in question until such time as an appropriate amendment to the rules can be made in terms of this section.

(c) Any contravention of or non-compliance with an interim rule shall *mutatis mutandis* have the same legal effect as the contravention of or non-compliance with a rule.”;

(d) by the substitution of subsection (10) of the following subsection:

“(10) The provisions of any rule made under this section shall be binding on all members, on all officers or employees of members and on every person utilising the services of a member or who concludes a transaction with a member in the course of that member’s business.”;

and

(e) by the addition of the following subsections:

“(11) (a) A rule may for any contravention thereof or failure to comply therewith, prescribe any one or more of the following penalties:

- (i) A reprimand;
- (ii) censure;
- (iii) a fine not exceeding R1 000 000, which fine shall be paid to the fund referred to in section 30;
- (iv) suspension;
- (v) cancellation of membership; or
- (vi) a direction to a member to terminate the employment of an officer or employee.

(b) The rule contemplated in paragraph (a) may also prescribe that full particulars regarding the imposition of a penalty shall be published and that any person convicted under that paragraph may be ordered to pay the costs incurred in the investigation or hearing in question.

(12) For the purpose of this section—

(a) ‘clearing’ means the act of calculating and determining prior to settlement of a particular transaction—

- (i) the exact number and identity of the listed securities to be delivered by or on behalf of the seller;
- (ii) the corresponding monetary consideration to be paid by or on behalf of the buyer in order to complete settlement of that particular transaction;

(b) ‘netting’ means an offsetting of positions or obligations by trading partners or participants in a system before settlement;

(c) ‘settlement’ means an act that discharges obligations in respect of funds or listed securities between two or more parties;

(d) ‘an interim rule’ means a rule issued temporarily by the Registrar to regulate a matter previously regulated by a rule which has been suspended.”.

### Substitution of section 13 of Act 1 of 1985

13. The following section is hereby substituted for section 13 of the principal Act:

**"Limitation on financial interest of president**

13. (1) Only a person who has no financial interest in any member of a stock exchange shall be appointed as president of that stock exchange.

(2) If no such person is available to be appointed as president, the committee may appoint any person who has a financial interest in a member to act as president for a period not exceeding six months."

**Substitution of section 14 of Act 1 of 1985**

14. The following section is hereby substituted for section 14 of the principal Act:

**"Separation of funds of members and other persons**

14. (1) Every member shall open and maintain a separate trust account at a bank and shall on the date of receipt of any payment from or on behalf of a person deposit in such account either the cheque, draft or instrument by means of which such payment is made or alternatively deposit for same day value in such account funds equal to the amount of such payment: Provided that a deposit shall not be necessary if such payment—

(a) is made to a member by a buyer of listed securities—

(i) against delivery of such securities to the buyer; or

(ii) against such securities being marked or recorded as the property of the buyer; or

(b) is preceded by a payment made by the member to a seller of listed securities against delivery of such securities to the member; or

(c) is made to pay a debt due to the member: Provided that a debt arising from the purchase of listed securities which have not been marked or recorded as the property of a buyer of listed securities shall not be regarded as a debt due for this purpose; or

(d) is made in terms of any other law or the rules which specifically provide for such payment to be deposited into some other account.

(2) Funds held in the trust account and any such funds which have not been deposited into the trust account as envisaged in subsection (1) but which are identifiable as belonging to a specific person, shall be deemed to be 'trust property' as defined in the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984), and the provisions of the said Act shall apply to such funds unless otherwise provided for in this section.

(3) Funds deposited into the trust account may only be withdrawn by the member for the purposes of making payment—

(a) to the person or member entitled to such payment; or

(b) in terms of any other law or the rules:

Provided that if after such withdrawal any deposited cheque, draft or other instrument against which such withdrawal was made, is not subsequently honoured, the member shall pay the shortfall arising from such default immediately into the trust account.

(4) All bank charges accruing in respect of the trust account shall be for the account of the member concerned except for those bank charges specifically related to a deposit or withdrawal of the funds of any person which shall, in such case, be for such person's own account.

(5) Any interest accruing on the funds in a trust account shall accrue to and shall be payable to the person entitled to such funds after any administration fee or charge to which the member may be entitled in terms of the rules or any other law has been deducted.

(6) (a) Notwithstanding any other law or the common law, an amount deposited in a trust account shall not under any circumstances form part of the assets of the member.

(b) Any excess remaining in the trust account after payment of or provision for all claims of persons whose funds have or should have been deposited in such trust account, shall not be trust property as contemplated in subsection (2).

(7) The division of the Supreme Court of South Africa having jurisdiction over a member may, on application made by the committee, the Registrar or any other person having a financial interest in or claim against the trust account, on good cause shown, prohibit such member from operating the trust account in any way and may appoint a curator to control and administer the trust account with such rights, duties and powers in relation thereto as the court may deem fit.”

#### Repeal of section 15 of Act 1 of 1985

15. Section 15 of the principal Act is hereby repealed.

#### Substitution of section 16 of Act 1 of 1985, as amended by section 14 of Act 64 of 1990 and section 12 of Act 54 of 1991

16. The following section is hereby substituted for section 16 of the principal Act:

##### “Committee’s duties in relation to listing of securities

##### 16. The committee [of a licensed stock exchange]—

- (a) shall keep a list of the securities which may be dealt in on the stock exchange, and shall, subject to the provisions of section 17(4), not permit [dealings] transactions on the stock exchange in securities not included in the list, but may permit [dealings] transactions on the stock exchange in securities of a company or corporate body not registered or incorporated in the Republic which are listed or quoted on, or in respect of which permission to [deal in] buy and sell such securities has been granted and has not been withdrawn by, a stock exchange outside the Republic which has been recognized by the Registrar for the purposes of this paragraph;
- (b) shall receive, consider and grant, defer or refuse applications by the issuers of securities for the inclusion of securities in the list of securities; [and]
- (c) shall revise the list at least once during every year by ensuring that every issuer of listed securities has certified to the stock exchange that such issuer has complied with every disclosure requirement for continued listing as may be imposed by the committee from time to time; and
- (d) shall submit to the Registrar in each year a certificate by the president that the list has been revised during that year, and may, notwithstanding any arrangement entered into before or after the commencement of this Act under which the listed securities may be [dealt in] bought and sold on the stock exchange, charge such fees in respect of the [revision] continued listing as may be [prescribed] provided for in the rules of the stock exchange.”

#### Amendment of section 17 of Act 1 of 1985, as amended by section 13 of Act 54 of 1991

17. Section 17 of the principal Act is hereby amended—

- (a) by the substitution for subsections (1), (2), (3) and (4) of the following subsections, respectively:

“(1) Notwithstanding any arrangement entered into under which listed securities may be [dealt in] bought and sold on a stock exchange, the committee [of the stock exchange] may, subject to the other provisions of this section [if after investigation in accordance with] and the rules, [of the stock exchange the committee is of the opinion that it is desirable to do so] and if it is in the public interest—

- (a) remove from a list of securities referred to in section 16(a) any securities previously included therein, or suspend the inclusion in the list of those securities; or
- (b) omit from a list of quotations of prices of securities issued for publication on the authority of the stock exchange, the prices of any securities previously quoted in the list: Provided that a transfer of the price of securities from one section of the list to another section of that list shall not be regarded as an omission as contemplated in this paragraph.

(2) No removal, suspension or omission referred to in subsection (1) shall be effected by the committee on a ground in respect of which the [person who issued] issuer of the securities has not had [the] an opportunity of making representations to the committee in support of the continued inclusion of the securities of prices in the relevant list.

(3) Whenever [the president of the stock exchange is of the opinion that] it is [desirable, also for the purposes of compliance with and enforcement of] in the public interest and whenever the rules and other requirements of the stock exchange in respect of the listing of securities [he may, after consultation with the head of the department of the stock exchange dealing with the listing of securities, without prior notice to any person and without hearing any person] are not complied with, the president may order a suspension or an omission referred to in paragraphs (a) and (b) of subsection (1), respectively, for a period not exceeding 30 days.

(4) [In the case where] Where the inclusion of securities in a list of securities has been suspended in terms of this section, the committee may, notwithstanding the provisions of section 16(a), permit members [of the stock exchange concerned to deal on that stock exchange in the] to buy and sell those securities [concerned] for the sole purpose of [making] allowing members concerned to make such purchases of [the] securities [concerned] as may be necessary to fulfill their obligations entered into in relation to those securities before the suspension."; and

(b) by the substitution for subsection (6) of the following subsection:

"(6) Securities [issued by a company and] considered by the president [after consultation with the head of the department of the stock exchange dealing with the listing of securities] to be eligible for continued inclusion in the list of securities, shall not be removed from that list upon the request or application by the [company] issuer concerned, unless the proposed removal has been approved by its shareholders at a general meeting."

#### Amendment of section 18 of Act 1 of 1985

18. Section 18 of the principal Act is hereby amended—

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

"(1) Notwithstanding any conditions [on] which the committee [of a stock exchange] may have [consented to] imposed in respect of the inclusion of any securities in the list referred to in section 16(a), any conditions imposed thereafter and in force from time to time in respect of the inclusion, may be applied by the committee also to securities in respect of which consent was granted prior to the imposition of the latter conditions, by notice in writing to the [person who issued the] issuer of such securities [concerned]: Provided that—

(a) [such] any conditions so applied to any securities shall take effect in respect of such securities from a date determined by the committee concerned, which shall not be earlier than three months from the date on which the committee so notifies such [person] issuer, but that the committee may extend the first-mentioned date on written application by the [person who issued the] issuer of such securities; and

(b) any conditions relating to the capital structure of [a company] an

issuer of listed securities or to the voting rights of shareholders of [a company] an issuer of listed securities shall not be [so] applied to the [existing shares of a company] securities of that issuer previously listed unless the conditions [on] in terms of which the committee [consented to the inclusion of the] included those securities [of the company concerned] in the said list, empower the committee so to do.”;

(b) by the deletion of subsection (2); and

(c) by the substitution for subsection (3) of the following subsection:

“(3) If the committee [of a stock exchange] refuses an application for an extension in terms of paragraph (a) of the proviso to subsection (1) [or in terms of subsection (2), the person] the issuer concerned may make representations in writing to the Registrar, and if [the Registrar is satisfied that] the application for an extension is reasonable and in the interests of the shareholders of the [company] issuer concerned, [he] the Registrar may, [in his discretion] after consultation with the committee concerned, extend the date on which such conditions shall take effect by not more than three months, and shall in writing inform the committee accordingly.”.

#### Substitution of section 19 of Act 1 of 1985

19. The following section is hereby substituted for section 19 of the principal Act:

##### “Disclosure of information by issuers of securities which are listed

19. (1)(a) The president [of a stock exchange] may, by notice in writing, require any [person] issuer whose securities are included in the list referred to in section 16(a) to disclose to him, within a period specified [by him, such] in such notice, any information at such [person’s] issuer’s disposal [as the president may determine, and if the president is satisfied, after such person has had] pertaining to such securities or to the affairs of that issuer which is in the public interest and, after giving such issuer an opportunity of making representations to him, [that the disclosure of that information to the registered holders of the securities in question will be in the public interest, he may by notice in writing require such person to disclose that information within the period specified in the notice] require such issuer to disclose that information to the registered holders of the securities in question within a further period specified in the said notice.

(b) If such [person] issuer has any objection to the disclosure of the information in question to the president or such registered holders, such [person] issuer may, after notice in writing thereof to the president, and within the [relative] relevant period so specified by the president, submit the information required by or furnished to the president, as the case may be, to the Registrar, together with a statement of the reasons for such [person’s] issuer’s objection, and if the Registrar is satisfied, after such [person has] issuer and the president had an opportunity of making representations to the Registrar, that the disclosure of the information in question to the registered holders of the securities in question will be in the public interest, the Registrar may by notice in writing require such [person] issuer so to disclose that information and to disclose it to the committee [of the stock exchange] within the period specified in the notice.

(2) Such [person] issuer shall, subject to the provisions of paragraph (b) of subsection (1), comply with the requirements of the president in terms of that paragraph, and shall comply with the requirements of the Registrar in terms of the said paragraph, within the [relative] relevant period specified

or within such further period as the president or the Registrar, as the case may be, may allow.

(3) If such [person] issuer discloses information to registered holders of the securities concerned which may influence the price of those securities, he shall at the same time make it available, for immediate publication, to—

- (a) the South African Press Association and at least two [English and two Afrikaans] daily newspapers in the Republic in any two official languages, one of which shall be English; and
- (b) the president of the stock exchange concerned.”

**Amendment of section 20 of Act 1 of 1985, as amended by section 27 of Act 54 of 1989, section 14 of Act 54 of 1991 and section 34 of Act 83 of 1992**

**20. Section 20 of the principal Act is hereby amended—**

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

“(a) If the committee—

- (i) rejects an application for membership by any person;
- (ii) or the disciplinary tribunal contemplated in section 2A(b) terminates the membership of any member or directs any member to terminate the employment of an officer or employee;
- (iii) or the disciplinary tribunal contemplated in section 2A(b) imposes any penalty on any member, stock-broker or officer or employee of a member;
- (iv) in terms of section 16(b) defers or refuses any application for the inclusion of securities in the list, or in terms of section 17(1)(a) removes securities from the list, or in terms of section 17(1)(a) suspends securities from the list of securities for a period which together with any suspension in terms of section 17(3) exceeds 30 days, or in terms of section 17(1)(b) omits the price of securities from a list of quotations for a period which together with any omission in terms of section 17(3) exceeds 30 days; or
- (v) grants an application in terms of section 16(b) for the inclusion of securities in the list where the listing requirements of the stock exchange were not complied with in respect of those securities or where the inclusion of the securities in such list is not in the public interest,

any aggrieved person contemplated in subparagraph (i), member, officer or employee of a member, stock-broker, issuer of securities or the Registrar, as the case may be, shall be entitled to be furnished with the reasons for the decision and may appeal against that decision to the board referred to in section 21, and the board may confirm, vary or set aside that decision, and, whether or not the appeal is withdrawn, make such award as to costs as it may deem fit: Provided that in the case of subparagraph (iii), the member, stock-broker or officer or employee of a member may appeal against such decision only with leave of the committee or disciplinary tribunal contemplated in section 2A(b), as the case may be.”;

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

“(b)(i) The board shall deal with an appeal with due regard to—

- (aa) the circumstances which [the committee] were considered in [coming to] making the decision appealed against in terms of paragraph (a);
- (bb) the grounds of the appeal;
- (cc) the documentary or oral evidence submitted or given by any person [(with or without legal representation)] at the request or with the permission of the board; and
- (dd) any other information at the disposal of the board.

(ii) The appellant shall, except if he is the Registrar, within the period prescribed, lodge with the secretary of the board such sum of money as the [chairman] chairperson of the board may have determined, as security for the payment of any costs that may be awarded against the appellant.”; and

- (c) by the insertion after subsection (2) of the following subsection:

“(2A) Notwithstanding the provisions of subsections (1) and (2), the

Registrar may, after having requested the committee in writing to review a decision which it has made or to make a decision which it has omitted to make or to take any action or to refrain from taking any particular action within a reasonable period, appeal to the board referred to in section 21 against any decision or action of the committee or any lack of decision or action by the committee and the provisions of subsection (1)(b)(ii) shall apply *mutatis mutandis*.”

#### Amendment of section 21 of Act 1 of 1985

21. Section 21 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The board shall consist of a judge who has been discharged from active service in terms of section 3 of the Judges’ Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989), or an advocate of senior counsel status of one of the divisions of the Supreme Court of the Republic of not less than 10 years standing, who shall be the [chairman] chairperson of the board, an accountant in public practice registered as an accountant and auditor, under the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991), of not less than 10 years standing, and a person selected by virtue of his knowledge of stock exchange matters in the Republic.”

#### Substitution of section 22 of Act 1 of 1985, as amended by section 30 of Act 51 of 1988 and section 15 of Act 54 of 1991

22. The following section is hereby substituted for section 22 of the principal Act:

##### “Buying of securities for payment against offer of delivery of securities

22. (1) If a member buys listed securities on behalf of any buyer, or, acting as a principal, sells listed securities to any buyer who is not a member, the buyer shall, subject to the provisions of section 23 and the rules, pay the member the purchase price of such securities in cash against the offer of delivery of such securities or, if such offer is not made, within a period of seven business days, or such other prescribed period, after the buyer buys such securities: Provided that such payment shall not be required to be made if the buyer—

(a) before such purchase makes arrangements with and gives instructions to a bank or a corporate body contemplated in paragraph (b) or a subsidiary of such a corporate body, to pay for the securities against delivery thereof, and notifies the member of such arrangements and instructions; or

(b) is a corporate body or a subsidiary of a corporate body, whose latest audited balance sheet as at a date not earlier than 15 months prior to the date on which the securities are bought, shows that its assets exceed its liabilities (excluding liabilities in respect of paid-up share capital and reserves) by at least R10 000 000, and—

(i) such corporate body is capable of paying for the securities against delivery thereof to itself or its subsidiary; or

(ii) in the case of such subsidiary the corporate body has furnished the member with a written guarantee undertaking to pay the debt of such subsidiary, if that subsidiary fails to pay for such securities against delivery thereof.

(2) If any buyer who is obliged to pay for any listed securities within the period referred to in subsection (1) fails to do so, the member shall, on the business day following the expiry of such period or as soon thereafter as the committee may allow in the particular case—

(a) sell such securities for the account of such buyer and claim the difference between the purchase price of such securities and the selling price obtained by such member for such securities, including interest as provided for in the rules; and

(b) sell for the account of such buyer—

(i) so many of any other listed securities belonging to such buyer and held by or in the custody of such member; or

(ii) so many of any other listed securities to be delivered to the buyer in respect of any transaction relating to securities previously entered into by such buyer with or through the member,

as is necessary to realise an amount equal to the amount still owing by the buyer in respect of such securities, after the sale of the securities in terms of paragraph (a).

(3) If a member has been notified of the arrangements and instructions referred to in paragraph (a) of the proviso to subsection (1), he shall as soon as such securities bought or any portion thereof as provided for in the rules, are available for delivery, offer to deliver such securities to the bank, corporate body or subsidiary concerned against payment of the amount due, and if payment is not made on the day of such offer the provisions of subsection (2)(a) and (b) shall apply *mutatis mutandis*.

(4) If the provisions of paragraph (b) of the proviso to subsection (1) apply to a buyer of listed securities, the member concerned shall, as soon as the listed securities bought or any portion thereof as provided for in the rules, are available for delivery, offer to deliver such securities to the buyer against payment of the amount due, and if payment is not made on the day of such offer the provisions of subsection (2)(a) and (b) shall apply *mutatis mutandis*.

(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.”

**Substitution of section 23 of Act 1 of 1985, as amended by section 31 of Act 51 of 1988 and section 16 of Act 54 of 1991**

**23. The following section is hereby substituted for section 23 of the principal Act:**

**“Buying of securities otherwise than for payment against offer of delivery of securities**

**23. (1)** If a member buys listed securities on behalf of any buyer, or, acting as a principal, sells listed securities to any buyer who is not a member on condition that the buyer is not obliged to pay for such securities against the offer of delivery of such securities, the buyer shall within seven business days, or such other prescribed period, after the member buys such securities—

(a) pay to the member so much of the purchase price of such securities in cash; or

(b) deposit with the member listed securities of such value, as is required in terms of the rules.

(2) If the required cash or value of listed securities is not paid or deposited within the period contemplated to in subsection (1), the provisions of section 22(2)(a) and (b) shall apply in so far as it is necessary to realise the amount required in terms of the rules.

(3) In determining the amount paid or owing by any buyer to a member for the purposes of this section the provisions of section 22(5) shall apply *mutatis mutandis*.”

**Substitution of section 23A of Act 1 of 1985, as inserted by section 32 of Act 51 of 1988**

24. The following section is hereby substituted for section 23A of the principal Act:

**"Signing of certain forms for purposes of transferring securities**

23A. If any securities are sold by a member in terms of section 22, 23 or 25 and the member is unable to obtain any form required to be signed by any person in terms of any law for the purposes of transferring such securities, the president may sign any such form on behalf of such person."

**Repeal of section 24 of Act 1 of 1985**

25. Section 24 of the principal Act is hereby repealed.

**Amendment of section 25 of Act 1 of 1985, as amended by section 17 of Act 54 of 1991**

26. Section 25 of the principal Act is hereby amended—

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

"(1) If any person, other than a member, sells securities to a member and fails to deliver such securities within a period of seven business days or any other prescribed period or a period as provided for in the rules, the member shall on the next succeeding business day after the expiry of such period, or as soon thereafter as the committee may allow in a particular case—

(a) buy such securities for the account of such seller and claim the difference between the selling price of such securities and the purchase price paid by the member for such securities, including interest as provided for in the rules; and

(b) sell for the account of such seller—

(i) so many of any other listed securities belonging to such seller and held by or in the custody of the member; or

(ii) so many of any other listed securities to be delivered to the seller in respect of any transaction relating to securities previously entered into by such seller with or through the member,

as is necessary to realise an amount equal to the amount still owing by the seller in respect of such securities, after the sale of the securities in terms of paragraph (a)."; and

(b) by the substitution for subsection (2) of the following subsection:

"(2)(a) If any person requests a [stock-broker] member to sell listed securities on his behalf [and he] or sells listed securities to a member and advises the [stock-broker] member concerned that he is the owner thereof or is entitled to become the owner thereof by virtue of an inheritance or in terms of any transaction entered into before the sale, but [that he] is not in possession of the securities, the [stock-broker] member shall, before he [sells] buys the securities as principal or sells the securities [satisfy himself] on behalf of such person, establish by means of proof in writing that such person is the owner thereof or entitled so to become the owner thereof, and ascertain by means of such proof on which date such person will acquire possession thereof, and sell the securities for delivery on a date not earlier than that date.

(b) If any person sells listed securities in the circumstances contemplated in paragraph (a) and the [stock-broker] member who sells them on [his] such person's behalf or buys them as principal is not the person who is to give possession thereof to [him] such person as is contemplated in that paragraph, such first-mentioned person shall within seven

business days after the receipt of the securities [by him] deliver them to such [stock-broker] member.

(c) If any person sells securities in the circumstances contemplated in paragraph (a) and the [stock-broker] member does not receive the securities by the date for delivery referred to in that paragraph, the [stock-broker] member shall on the next succeeding business day after that date or as soon thereafter as the committee [of a stock exchange] may allow in the particular case, buy the securities for the account of such person."

**Substitution of section 26 of Act 1 of 1985, as amended by section 18 of Act 54 of 1991**

27. The following section is hereby substituted for section 26 of the principal Act:

**"Minister may prescribe different or additional provisions for delivery of and payment for listed securities**

26. Notwithstanding the provisions of sections 22, 23, 23A, 25, 27 and 29, the Minister may, if it is in the public interest, prescribe different or additional provisions in respect to the delivery of or the payment for listed securities when bought or sold on a stock exchange."

**Amendment of section 27 of Act 1 of 1985, as amended by section 15 of Act 64 of 1990 and section 19 of Act 54 of 1991**

28. Section 27 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

"(1) Sections 22, 23 [24] and 25 shall not unless otherwise prescribed apply if the person [on whose behalf securities are purchased or sold] buying and selling securities is a person in any other country, and any part of his regular business in that country consists of the buying and selling of securities.

(2) Sections 22, 23 [24(1)(a) and (3)] and 25 shall not apply to a [stock-broker] member who buys or sells securities to execute an order placed by any other [stock-broker] member."

(b) by the deletion of subsection (3); and

(c) by the substitution for subsection (3A), (4) and (5) of the following subsections, respectively:

(3A) The provisions of sections 22, 23 [24] and 25 shall not apply to any person who buys or sells listed options on [securities or] listed securities.

(4) If a [stock-broker] member who [is] in terms of section 22, 23 [24] or 25, [or 26] read with this section, is obliged to buy or sell securities within a specified or prescribed period fails to do so, he shall continue to be obliged to buy or sell those securities, as the case may be, but his rights against and his liabilities to the person on whose behalf he is obliged to buy or sell the securities, shall be the rights and liabilities that would have existed if he had bought or sold those securities within the specified or prescribed period.

(5) A [stock-broker] member who is in terms of section 22, 23 [24] or 25, [or 26] read with this section, obliged to buy or sell securities, shall be entitled to recover interest on the amount still owing to him after the purchase or sale, as the case may be, and as from the date after the fulfilment of that obligation."

**Substitution of section 28 of Act 1 of 1985**

29. The following section is hereby substituted for section 28 of the principal Act:

**"Prohibition of bear sales by directors and certain shareholders**

28. A director of an issuer of listed securities or any person directly or indirectly entitled to the financial rights attaching to more than 10 per cent of any class of listed securities shall not for his own account effect a bear sale of such listed securities."

5

**Substitution of section 29 of Act 1 of 1985, as amended by section 16 of Act 64 of 1990**

30. The following section is hereby substituted for section 29 of the principal Act:

**"Repudiation of transaction relating to buying of securities**

29. If a [stock-broker] member buys listed securities on behalf of any [person] buyer or, acting as a principal, sells listed securities to a buyer who is not a member for delivery to such [person] buyer within a specified period and the member fails to deliver [them to] such securities within such period, then such [person] within that period, such person may call upon the stock-broker in writing to deliver to him the securities in a negotiable form within a period determined by him but not ending earlier than 14 business days thereafter] buyer may require the member in writing to deliver such securities within a period determined by such buyer (but not ending earlier than 14 business days thereafter) and if the [stock-broker] member fails to do so, such [person] buyer may, without prejudice to any other rights he may have, repudiate the transaction: Provided that for the purposes of this section the following acts shall be deemed to constitute [effective] delivery of listed securities to [the client] a buyer:

- (a) The physical handing over of listed securities [to the client] in negotiable form or in the name of the buyer or his nominee, to a buyer or his order or nominee;
- (b) the lodgement of securities in negotiable form with a company transfer office for registration into the name of [the client] a buyer or his nominee in terms of a prior written instruction by the [client] buyer or the registration of transfer of securities into the name of the [stock-broker's] member's nominee company; or
- (c) the posting to the [client] buyer, per registered post, of securities in negotiable form, or in the name of the buyer or his nominee, in terms of a prior written instruction given by the buyer, before the expiry of the aforementioned period of 14 [business] days."

**Amendment of section 30 of Act 1 of 1985**

31. Section 30 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

"(1) The committee [of a stock exchange] shall establish and maintain, to the satisfaction of the Registrar, a fund out of which any liability of a member, arising out of the business of buying and selling listed securities, shall [after excussion of a stock-broker] be paid, up to an amount, for different categories of claims, specified in the rules referred to in subsection (3), [his liabilities arising out of the buying and selling of securities by him on behalf of other persons, while a member of the stock exchange in question] if such member fails to discharge any such liability.

(2) Every [stock-broker] member shall contribute to the fund on such basis as may be determined in the rules referred to in subsection (3)."

**Repeal of sections 31 to 35 of Act 1 of 1985**

32. Sections 31 to 35 of the principal Act are hereby repealed.

**Substitution of section 36 of Act 1 of 1985**

33. The following section is hereby substituted for section 36 of the principal Act:

**"Marking of or recording details of securities**

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36. Whenever a document of title relating to securities, whether listed or unlisted, comes into the possession of a [stock-broker or carrier against shares] member, he shall, as soon as it is practicable to do so and in accordance with the rules and to the satisfaction of the committee—

(a) mark it; or

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(b) record and store the necessary details in a computer data base, in a manner which will render it possible at any time thereafter to establish readily the identity of the [person] buyer or seller entitled to the ownership of those securities."

**Substitution of section 37 of Act 1 of 1985**

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34. The following section is hereby substituted for section 37 of the principal Act:

**"Restriction on alienation of securities which have been deposited or are held as security in respect of loan**

37. Subject to the provisions of sections 22(2), (3) and (4) and 23(2), [and 26(2) and (3)] no [stock-broker] member shall alienate securities, whether listed or unlisted, which have been deposited with him in terms of section 23 [or 24 and no stock-broker or carrier against shares shall alienate securities held by him] as security in respect of a loan, unless the person who deposited the securities [or to whom the loan was made, as the case may be] has before or after the deposit, [or loan] authorized him thereto in writing."

**Substitution of section 38 of Act 1 of 1985**

35. The following section is hereby substituted for section 38 of the principal Act:

**"Restriction on borrowing against and repledging of securities belonging to other persons**

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38. A [stock-broker or carrier against shares] member shall not—

(a) borrow against securities, whether listed or unlisted, which a [client] person has pledged with him an amount in excess of the outstanding balance of any amount he may have lent [the client concerned] such person against such securities;

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(b) repledge securities, whether listed or unlisted, which a [client] person has pledged with him without the written consent of [the client concerned] such person; or

(c) repledge more of the securities, whether listed or unlisted, which a [client] person has pledged with him than would be required by a lender to lend to him an amount not exceeding the outstanding balance of the amount which he has lent to such [client] person: Provided that he may repledge a certificate for 100 shares or for securities other than shares of a nominal value of R100 (or of R200 where no smaller certificate is available), notwithstanding the fact that the number of shares or the nominal value of such securities so required for a loan of such amount, is less than 100, or R100 or R200, as the case may be."

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**Substitution of section 39 of Act 1 of 1985, as substituted by section 29 of Act 54 of 1989**

36. The following section is hereby substituted for section 39 of the principal Act:

**“Undesirable advertising or canvassing relating to securities**

39. (1) No person other than a member or an officer or employee of a member, who is so permitted in terms of the rules shall in any matter or by any means, either for himself or for any other person, directly or indirectly advertise or canvass for any business relating to the buying and selling of listed securities. 5

(2) No person other than a person approved by the Registrar in terms of section 4(1) shall in any matter or by any means, either for himself or for any other person, directly or indirectly advertise or canvass for business referred to in section 4(1). 10

(3) Notwithstanding anything to the contrary contained in any law, the Registrar may, if an advertisement, brochure or other document relating to securities is misleading or for any reason objectionable, direct such person not to publish or to cease the publication of the advertisement, brochure or document concerned or to effect such amendments as he may deem fit.”. 15

**Substitution of section 40 of Act 1 of 1985**

37. The following section is hereby substituted for section 40 of the principal Act: 20

**“Manipulative practices**

40. No person shall—

(a) by means of any statement, promise, [or] forecast or any other action which he knows to be misleading or which is likely to be misleading induce any other person to buy or sell listed securities; or 25

(b) directly or indirectly, whether within or outside a stock exchange, by means of the creation of fictitious transactions or the spreading of false reports attempt to stimulate activities or influence or manipulate the prices of listed securities [on a licensed stock exchange]; or

(c) enter into any transaction, including a bear sale, with the intention of influencing or manipulating the price of listed securities.”. 30

**Substitution of section 42 of Act 1 of 1985, as amended by section 20 of Act 54 of 1991 and section 61 of Act 104 of 1993**

38. The following section is hereby substituted for section 42 of the principal Act:

**“Appointment of auditor**

42. (1) Every [stock-broker or carrier against shares] member shall appoint an auditor registered as an accountant and auditor under the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), who engages in public practice as contemplated in that Act and who has no direct or indirect financial interest in the business carried on by such [broker or carrier] member. 40

(2) No [director] member or officer or employee of a [stock-broker or of a carrier against shares, no member of a stock exchange] member and no firm [of] in which [such director, employee or member is a member or employee] a member or an officer or employee of a member has a financial interest shall be appointed as an auditor of that [stock-broker or carrier against shares] member. 45

(3) Every [stock-broker and carrier against shares] member shall

within 30 days of the date of appointment of an auditor under this section, apply to the Registrar for approval of that appointment.

(4) The Registrar may **[without assigning any reason therefor]** refuse to approve the appointment of an auditor or may withdraw his prior approval of such appointment, and thereupon the auditor concerned shall vacate his office as auditor of the **[stock-broker or carrier against shares]** member concerned. 5

(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 office as auditor of a **[stock-broker or carrier against shares]** member, the **[stock-broker or carrier against shares]** member concerned shall appoint some other person as auditor, but again subject to the approval of the Registrar. 10

(6) Where the auditor of a **[stock-broker or carrier against shares]** member is a partnership, such auditor shall for the purposes of subsection (5) be deemed not to have vacated his 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, partners therein. 15 20

(7) If an auditor who has been removed from office by a member is of the opinion that **[he was removed]** such removal was for improper reasons, **[he]** such auditor shall forthwith **[by registered post]** inform the Registrar thereof **[by facsimile or by registered post]**.”. 25

#### Substitution of section 43 of Act 1 of 1985

39. The following section is hereby substituted for section 43 of the principal Act:

##### “Accounting records and audit

43. (1) Every **[stock-broker and carrier against shares]** member shall—

- (a) keep such accounting records in one of the official languages of the Republic, as may be prescribed; 30
- (b) preserve such records in a safe place for a period of at least five years as from the date of the latest entry therein; and
- (c) cause such records to be audited, not later than **[31 May of the year in question]** three months after the financial year end of such member or such later date as the Registrar may allow, **[in respect of each year ending upon the last day of February, or such other day as the Registrar may approve]** by an auditor whose appointment has been approved by the Registrar in terms of section 42. 35

(2) The auditor who has in terms of this section audited the accounting records of a **[stock-broker or carrier against shares]** member shall, not later than **[30 June of the year in question]** four months after the financial year end of such member or such later date as the Registrar may allow, transmit to the committee and on request to the Registrar—**[and in the case of a stock-broker also to the committee of the stock exchange concerned]**— 40 45

- (a) a copy of the **[balance sheet]** annual financial statements of that **[broker or carrier]** member for the year to which the audit relates, signed by the **[broker or carrier, as the case may be, or, in the case of]** member if the member is a natural person and if the member is a partnership or company, by at least two **[members of the partnership]** partners or two directors, **[of the company]** as the case may be; 50
- (b) a report setting forth—
  - (i) whether or not all the necessary accounting records have been kept by the **[broker or carrier]** member during the period to 55

- which the audit relates, whether or not they have been properly kept, and if not, in which respects they are defective;
- (ii) whether or not he has obtained all the information and explanations he has required and if not, the nature of the information [he has] not obtained and the matters which have not been explained;
- (iii) whether or not any securities, whether listed or unlisted, which, according to the relevant accounting records, are held by the [broker or carrier] member on behalf of any other person, including securities, whether listed or unlisted, held in safe custody, are in possession of the [broker or carrier] member, and if not, in whose possession or custody they are and for what purpose;
- (iv) whether investigations carried out [as at the date of the balance sheet] indicate that the [broker or carrier] member appears to comply with the provisions of—
- (aa) sections 14, 22, 23, [24] 25, [26 and 27] 36, 37 and 38;
- (bb) regulations relating to accounting records or the auditing thereof or in relation to capital adequacy;
- (cc) rules governing the maintenance and operation of the trust account referred to in section 14, capital adequacy, the marking of documents of title, the granting of credit, the lending or pledging of securities, the issue of receipts and the holding or delivery of certificates relating to securities, and whether or not the auditor during the course of the audit became aware of any contravention of the said provisions; and
- (v) such other matters as may be prescribed.”

#### Substitution of section 44 of Act 1 of 1985

40. The following section is hereby substituted for section 44 of the principal Act:

##### “Report by auditor of irregularities

44. An auditor who in terms of section 43 audits the accounting records of a member and in the course of such audit becomes aware that the member has failed to comply with a requirement of any provision referred to in section 43(2)(b)(iv), shall report the matter forthwith to the Registrar and the president of the stock exchange concerned if such requirement is material.”

#### Amendment of section 45 of Act 1 of 1985

41. Section 45 of the principal Act is hereby amended—

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

“(1) The provisions of the Inspection of Financial Institutions Act, 1984 (Act No. 38 of 1984), shall apply *mutatis mutandis* to—

- (a) (i) a stock exchange;
- (ii) a member or an officer or employee of a member;
- (iii) a person approved in terms of section 4 or an officer or employee of such a person; and
- (b) (i) any person not licensed to carry on the business of a stock exchange;
- (ii) a person who is not a member; or
- (iii) a person not approved in terms of section 4, but who is carrying on the business of a stock exchange, of a member or of a person requiring approval in terms of section 4, as the case may be.”;

(b) by the substitution for paragraph (b) of subsection (2) of the following paragraph:

“(b) section 8(1) thereof shall be construed as if the following further proviso had been added at the end thereof:

- (c) the registrar [may in his discretion] shall communicate to the committee [of] or the official responsible for surveillance of the business carried on by a stock exchange any relevant information pertaining to the affairs of a member or past member of that stock exchange obtained by [him] the registrar in the course of an inspection under this Act, or from a report by an inspector on such an inspection [of the affairs of a stock-broker who is or was a member of that stock exchange].’.”; 5
- (c) by the addition to subsection (2) of the following paragraph: 10  
 “(c) the stock exchange, member or other person referred to in paragraphs (a) and (b) shall be deemed to be a financial institution, and the registrar shall be the Registrar of such stock exchange, member or person.”; and
- (d) by the substitution for subsection (3) of the following subsection: 15  
 “(3) The committee [of a stock exchange] or the disciplinary tribunal contemplated in section 2A(b) may in any disciplinary proceedings in terms of the rules [of the stock exchange against the member concerned or any other member of the stock exchange] take into consideration any relevant information furnished to the committee by 20  
 virtue of the provisions of subsection (2)(b).”.

#### Insertion of section 45A in Act 1 of 1985

42. The following section is hereby inserted in the principal Act after section 45:

#### “Disclosure of information by stock exchange

45A. Notwithstanding the provisions of any other law, a stock exchange 25  
 may enter into an agreement with any other exchange, whether domestic or foreign, to disclose information relating to 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 and the disclosure will not be against the 30  
 public interest.”.

#### Amendment of section 46 of Act 1 of 1985

43. Section 46 of the principal Act is hereby amended—

- (a) by the substitution for subsections (1) and (2) of the following subsections, 35  
 respectively:  
 “(1) The Registrar or a person nominated by him may attend any meeting of—  
 (a) [the] a committee [of a stock exchange] or a subcommittee of that committee, and except for voting take part in all the proceedings at such meeting; 40  
 (b) the disciplinary tribunal contemplated in section 2A(b) and may request an opportunity to be heard by such tribunal.  
 (2) The president [of a stock exchange] shall furnish the Registrar with all notices, minutes and documents which are furnished to members of the committee [of the stock exchange concerned or] and a 45  
 subcommittee of that committee, as if the Registrar were a member of that committee and subcommittee.”; and
- (b) by the addition of the following subsection:  
 “(3) The provisions of subsection (2) shall apply *mutatis mutandis* to the chairperson of the disciplinary tribunal contemplated in section 50  
 2A(b).”.

#### Substitution of section 47 of Act 1 of 1985, as substituted by section 30 of Act 54 of 1989

44. The following section is hereby substituted for section 47 of the principal Act:

**“Furnishing of information to Registrar**

47. The Registrar may by notice in writing require [any person who is not a stock-broker or licensed carrier against shares or a person referred to in section 4(1) and in respect of whom the Registrar has reason to suspect that he]—

- (a) a stock exchange or a member thereof;
  - (b) any person approved in terms of section 4(1); or
  - (c) any other person who is carrying on [the] business [of buying and selling securities] in contravention of section 3 [(2), (3), (4) or (5) or of a carrier against shares in contravention of section 3(6) or of administering or holding in safe custody on behalf of any other person any investments in listed securities or any investments of which listed securities form part in contravention of] or 4(1),
- to transmit to the Registrar within a period stated in the notice any document or information at that stock exchange's, member's or person's disposal and relating to [his] that stock exchange's, member's or person's affairs which the Registrar may reasonably require, and that stock exchange, member or person shall comply with the requirements of the Registrar to his satisfaction within the relevant period or within such further period as the Registrar may allow.”.

Substitution of section 48 of Act 1 of 1985, as amended by section 31 of Act 54 of 1989, section 38 of Act 55 of 1989 and section 21 of Act 54 of 1991

45. The following section is hereby substituted for section 48 of the principal Act:

**“Penalties**

48. (1) Any person who—
- (a) contravenes a provision of section 3(1) or (2), 4(1) or (2) or 14;
  - (b) contravenes a provision of section 5;
  - (c) contravenes or fails to comply with a provision of section [4 or 6, or of section 22, 23, 25 or 26, read with section 27, or of section 28, 34, 38 or] 43(1);
  - (d) contravenes or fails to comply with a provision of section [3(2), (5) or (6)] 19(3), [35] 36, 37, 39 or 42(1), (2), (3), (4) or (5);
  - (e) refuses or fails to comply with any requirement of a president under section 19 or of the Registrar under the said section 19, section 39 or section 47;
  - (f) carries on the business of a [stock-broker or carrier against shares] member, at any time when in terms of a declaration under section 50 he is disqualified from doing so;
  - (g) makes any incorrect statement or entry in any accounting record kept under section 43, knowing the same to be incorrect; or
  - (h) contravenes a provision of section 40 or 41,
- shall be guilty of an offence and liable on conviction—
- (i) in the case of an offence referred to in paragraph (a), (f) or (h), to a fine [not exceeding R4 000] or to imprisonment for a period not exceeding [four] five years [or to both that fine and that imprisonment];
  - (ii) in the case of an offence referred to in paragraph (c), (e) or (g), to a fine [not exceeding R2 000] or to imprisonment for a period not exceeding two years [or to both that fine and that imprisonment]; and
  - (iii) in the case of an offence referred to in paragraph (b) or (d), [or (f)] to a fine [not exceeding R400] or to imprisonment for a period not exceeding 12 months [or to both that fine and that imprisonment].”.

**Substitution of section 49 of Act 1 of 1985**

46. The following section is hereby substituted for section 49 of the principal Act:

**“Evidence**

49. A record purporting to have been made or kept in the ordinary course of the carrying on of the business of a stock exchange, [or] the business of a [stock-broker or carrier against shares] member or the business of a person approved in terms of section 4, or a copy of or an extract from such record certified to be correct by an officer in the service of the State, shall on its mere production by the public prosecutor in any criminal proceedings under this Act or any other law or the common law against the person who carries or carried on the business in question or any other person, be admissible in evidence and be *prima facie* proof of the facts contained in such record, copy or extract.”

**Substitution of section 50 of Act 1 of 1985**

47. The following section is hereby substituted for section 50 of the principal Act:

**“Powers of court to declare member, officer or employee of member or person approved in terms of section 4 disqualified**

50. (1) If a court—

- (a) convicts a [stock-broker or carrier against shares] member, an officer or employee of a member or a person approved in terms of section 4 of an offence under this Act or of an offence of which any dishonest act or omission is an element; or
- (b) finds, in proceedings to which a [broker or carrier] member, an officer or employee of a member, a person approved in terms of section 4 or such person's officer or employee is a party or in which his conduct is called in question, that he has been guilty of dishonest conduct,

the court may (in addition, in a case referred to in paragraph (a), to any sentence it may impose) declare [the broker or carrier concerned] that member, officer or employee of a member, person or such person's officer or employee to be disqualified, for an indefinite period or for a period specified by the court, from carrying on the business of a [stock-broker or carrier against shares] member, from being an officer or employee of a member or from carrying on the business referred to in section 4, as the case may be.

(2) The court may, on sufficient cause shown, vary a declaration made under subsection (1).

(3) The registrar or clerk of any court which has made any declaration under subsection (1), or varied any declaration under subsection (2), shall forthwith notify the Registrar and [in the case of such declaration in respect of a stock-broker, also] the committee of the stock exchange [of] at which the [broker concerned is a member] member carries on business or at which the officer or the employee of a member is employed of that declaration or variation.

(4) No declaration made under subsection (1) shall affect any right on the part of the committee [of a stock exchange] to take disciplinary action against the [broker] member, or the officer or employee of a member, concerned.”

**Amendment of section 51 of Act 1 of 1985, as amended by section 14 of Act 7 of 1993**

48. Section 51 of the principal Act is hereby amended—

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

“(c) the minimum capital which a member shall hold, what that capital may be comprised of and the basis of valuation of such capital;”; and

(b) by the deletion of paragraph (d) of subsection (1):

**Insertion of section 52A in Act 1 of 1985**

49. The following section is hereby inserted in the principal Act after section 52:

**“Limitation of liability**

52A. (1) No 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 executive officer, employee, representative or member in the *bona fide* exercise of any power or the carrying out of any duty or performance of any function under or in terms of this Act or the rules. 5 10

(2) For the purposes of this section, ‘*bona fide*’ shall include ‘negligent’ but not ‘grossly negligent’, ‘wilful’ or ‘dishonest’.”

**Transitional provision**

50. Any rule, requirement, directive or decision made, put or issued or other thing done under or in terms of any provision of the principal Act as it was in force immediately prior to the commencement of this Act, shall be deemed to have been made, put, issued or done under or in terms of the corresponding provision of the principal Act as amended by this Act. 15

**Extension of application of Act 1 of 1985**

51. (1) The principal Act shall apply throughout the Republic. 20

(2) Any law referred to in the principal Act which is not yet applicable in a territory to which the principal Act is extended, shall for the purposes of the principal Act be deemed to be applicable in such territory.

**Short title and commencement**

52. This Act shall be called the Stock Exchanges Control Amendment Act, 1995, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*. 25