

(22 September 1998 – to date)

BANKS ACT 94 OF 1990

(Government Notice 1597 in Government Gazette 12617 dated 11 July 1990. Commencement date:

1 February 1991 (except for sections 60(1) and 60(2)) [Proc. No. 12, Gazette No. 13003])

SOUTH AFRICAN RESERVE BANK

DESIGNATION OF MEMBERS OF THE JOHANNESBURG STOCK EXCHANGE AS PERSONS AUTHORISED TO ACCEPT MONEY AS MANDATARIES AND TO DEPOSIT SUCH MONEY INTO BANKING ACCOUNTS MAINTAINED BY THEM

Government Notice 1202 in Government Gazette 19283 dated 22 September 1998. Commencement date:

22 September 1998

Under paragraph (gg) of the definition of "the business of a bank" in section 1 of the Banks Act, 1990 (Act No. 94 of 1990), I, Christo Floris Wiese, Registrar of Banks, hereby designate any member of the Johannesburg Stock Exchange as a mandatary who, for the purposes of effecting a money-broking transaction (as defined in paragraph 1 of the Schedule), may, subject to the conditions set out in paragraph 2 of the Schedule, accept money from a mandator in terms of a contract of mandate (as defined in paragraph 1 of the Schedule), and in the execution of the mandate deposit such money into an account maintained by the mandatary with a bank, whether or not such money is so deposited together with money accepted by the mandatary from other mandators.

C F WIESE,
Registrar of Banks

SCHEDULE

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ANNEXURE

1. Definitions

In this Schedule –

Prepared by:

"bank" includes a mutual bank as defined in section 1 of the Mutual Banks Act, 1993 (Act No. 124 of 1993);

"committee" means the governing body managing the affairs of the JSE;

"contract of mandate" means a written contract between a mandator and a member of the JSE as mandatary –

(a) in terms of which contract the mandatary –

- (i) is to conclude a money-braking transaction or money-braking transactions for the ultimate risk and benefit of the mandator;
- (ii) does not borrow the money entrusted to the mandatary by the mandator; and
- (iii) accepts no liability for the continued solvency and reliability of a bank with which a money-braking transaction is concluded; and

(b) which contract shall contain at least the provisions set out in the Annexure to this Notice;

"fixed deposit" means a non-transferable deposit with a bank, made for a specified fixed period or which is repayable on the effluxion of a specified period of notice of withdrawal, and which bears interest;

"JSE" means the Johannesburg Stock Exchange, the association that carries on the business of a stock exchange under that name, under a stock exchange licence granted in terms of the Stock Exchanges Control Act;

"JSE rules and directives" means the rules of the JSE made in terms of section 12 of the Stock Exchanges Control Act and the directives published from time to time by the committee;

"mandator" means any person who concludes a contract of mandate with a member of the JSE as mandatary;

"member of the JSE" means any person authorised in terms of the JSE rules to carry on the business of buying and selling listed securities (as defined in section 1 of the Stock Exchanges Control Act), and who has been admitted as a member of the JSE;

"money-broking transaction" means a money-lending transaction between a member of the JSE and a bank, pursuant to a contract of mandate between that member of the JSE and a mandator, which transaction is concluded for the ultimate risk and benefit of the mandator;

"Stock Exchanges Control Act" means the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);

"the Act" means the Banks Act, 1990 (Act No. 94 of 1990), and, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned thereto;

"the Regulations" means the Regulations relating to Banks as promulgated in Government Notice No. R628 of 26 April 1996, as amended from time to time.

2. Conditions

The acceptance of money by members of the JSE in terms of a contract of mandate shall be subject to the following conditions:

- (1) No member of the JSE shall enter into money-broking transactions without the prior written authorisation of the committee, which authorisation –
 - (a) shall be granted subject to such conditions as the committee may determine from time to time; and
 - (b) may be reviewed, amended or withdrawn by the committee at any time.
- (2) A member of the JSE to whom an authorisation contemplated in subparagraph (1) has been granted shall at all times comply with the JSE rules and directives and the decisions of the committee as substituted or amended from time to time, in so far as such rules, directives and decisions are applicable to money-broking transactions and are not inconsistent with the provisions of this Notice, the Act or the Regulations.
- (3) For purposes of a money-broking transaction, money may be accepted by a member of the JSE only –
 - (a) after a contract of mandate in respect of such money has been signed by both parties to the contract; or
 - (b) in the case of the transaction being conducted by facsimile, after a facsimile copy of the original contract of mandate fully signed by the mandator has been signed by the member of the JSE, provided that the original contract of mandate, duly signed by the mandator, shall be provided to the member and be duly signed by him within 21 days after the acceptance of the money as contemplated in this sub-paragraph.

- (4) The signed original of the contract of mandate shall be retained by the member of the JSE, and a copy thereof shall be sent or delivered to the mandator within 21 days from the date on which the member of the JSE came into possession of the signed original.
- (5) The contract of mandate shall be signed by –
 - (a) two partners or executive directors or a partner or an executive director and a stockbroker of the member; or
 - (b) a partner or an executive director or a stockbroker and a senior officer in the employ of the member and to whom a power of attorney has been granted by the member; or
 - (c) a partner or an executive director or a stockbroker and such other person as the committee may in special circumstances and for such period as it may determine approve and to whom a power of attorney has been granted by the member.
- (6) A member of the JSE conducting money-broking transactions shall –
 - (a) deposit money accepted from a mandator in either a current, call or a fixed-deposit account with a bank, irrespective of whether such money is so deposited together with money accepted by the mandatary from other mandators;
 - (b) operate a separate bank account or separate bank accounts for money-broking transactions only, which account or accounts shall –
 - (i) be reconciled to bank statements daily; and
 - (ii) bear interest if the account or accounts is/are not zeroed daily;
 - (c) monthly furnish each mandator with a statement, produced on the Broker-Deal Accounting System or such other system as the Director: Surveillance of the JSE may approve, whether unique to a member or used by more than one member (hereinafter referred to as "the system"), reflecting in respect of the preceding month –
 - (i) all amounts invested and withdrawn for the benefit of the mandator concerned, including investments that have not matured and that were made prior to the month for which the statement is provided;
 - (ii) the dates and terms of such investments, the name/names of the bank/banks with which the money-broking transaction/transactions has/have been concluded, rates of interest received by the member and repayment details during the month for which the statement is provided;

- (iii) the total (gross) amount of interest earned by the mandator during that month on amounts invested for the benefit of the mandator concerned; and
 - (iv) the actual amount of the fee charged by the member of the JSE to the mandator for that month, reflected in rand, or as a percentage.
- (7) A member of the JSE conducting money-broking transactions shall keep records which shall at all times be available to the Director: Surveillance of the JSE, which shall contain –
 - (a) a list of mandator codes and any changes to such list;
 - (b) a daily report showing allocations to mandators matched to bank balances, backdated allocations and details of unmatched and unidentified deposits and allocations; and
 - (c) in the event of the winding-up of a bank or of a bank being placed under curatorship, a list of deposits with such bank on behalf of mandators, as soon as notification of the winding-up or curatorship is received.
- (8) A member of the JSE conducting money-broking transactions shall –
 - (a) not permit a mandator to withdraw a fixed deposit prematurely without the written agreement of the bank with which the deposit is placed, and shall not substitute one mandator's fixed deposit for another's in order to facilitate early redemption;
 - (b) match the term of a deposit made with a bank with the instructions of, and/or the terms of the contract of mandate concluded with, the mandator who is allocated to that deposit;
 - (c) obtain written evidence from a bank of each deposit made with that bank;
 - (d) keep a register, in a form prescribed by the committee, of all contracts of mandate entered into by that member of the JSE in terms of the provisions of this Notice; and
 - (e) keep safely all confirmations of deposit, receipts or other documents issued by a bank in connection with a deposit made pursuant to a money-broking transaction.
- (9) Every cheque or fund-transfer instruction drawn or given by a member of the JSE in connection with a money-broking transaction or contract of mandate, and any requests for the withdrawal of money from a bank, shall be signed by or on behalf of such member of the JSE, by –
 - (a) two partners or executive directors or a partner or an executive director and a stockbroker of the member; or

- (b) a partner or an executive director or a stockbroker and a senior officer in the employ of the member and to whom a power of attorney has been granted by the member; or
- (c) a partner or an executive director or a stockbroker and such other person as the committee may in special circumstances and for such period as it may determine approve and in whose favour a power of attorney has been granted by the member,

Provided that, notwithstanding the provisions of this subparagraph, any cheque or fund-transfer may be signed by such other persons as the committee may approve in writing on an annual basis.

- (10) A member of the JSE which records its money-broking transactions through the medium of an independent computerised system shall ensure –
 - (a) that the entire system is backed-up at least twice daily; and
 - (b) that back-up disks are securely stored at other premises.

3. Repeal of Government Notice No. R. 995

Government Notice No. R. 995 dated 3 August 1998 is hereby repealed.

CONTRACT OF MANDATE PERTAINING TO MONEY-BROKING TRANSACTIONS

(Containing provisions required as a minimum by the committee of the JSE or prescribed in the Banks Act, 1990, and to which may be added additional or more detailed terms agreed to between the mandator and the member of the JSE, provided that such additional or more detailed terms do not detract from the said minimum provisions.)

between

.....
 ("the mandator")

and

.....
 ("the mandatory")

1. Definitions

In this contract –

- 1.1 unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Banks Act, 1990, the Stock Exchanges Control Act, 1985, or the JSE rules shall have the meaning so assigned thereto;
- 1.2 "bank" includes a mutual bank as defined in section 1 of the Mutual Banks Act, 1993 (Act No. 124 of 1993);
- 1.3 "committee" means the governing body managing the affairs of the JSE;
- 1.4 "fixed deposit" means a non-transferable deposit with a bank, made for a specified fixed period or which is repayable on the effluxion of a specified period of notice of withdrawal, and which bears interest;
- 1.5 "JSE" means the Johannesburg Stock Exchange, the association that carries on the business of a stock exchange under that name under a stock exchange licence granted in terms of the Stock Exchanges Control Act, 1985, (Act No. 1 of 1985);
- 1.6 "JSE rules and directives" means the rules of the JSE made in terms of section 12 of the Stock Exchanges Control Act, 1985 and the directives published from time to time by the committee;

- 1.7 "member of the JSE" means any person who is authorised in terms of the JSE rules to carry on the business of buying and selling listed securities (as defined in section 1 of the Stock Exchanges Control Act, 1985) and who has been admitted as a member of the JSE;
- 1.8 "money-broking transaction" means a money-lending transaction concluded by the mandatary with a bank as borrower, pursuant to this contract of mandate and for the ultimate benefit and risk of the mandator;
- 1.9 words importing one gender shall include the other gender;
- 1.10 the singular shall include the plural and *vice versa*.

2. Appointment of the mandatary

The mandator hereby appoints the mandatary to conclude money-broking transactions, utilising money supplied to the mandatary by the mandator for that purpose.

3. Termination of this contract

Subject to accounting for outstanding obligations, this contract –

- 3.1 may be terminated at the close of business on any day by written notice delivered by one party to the other;
- 3.2 shall automatically terminate in any of the following events:
- 3.2.1 The death of the mandator or the mandatary, if a natural person;
- 3.2.2 the sequestration of the estate of the mandator or mandatary, if a natural person or a partnership;
- 3.2.3 the dissolution, for reasons other than sequestration, of the mandator or mandatary, if a partnership;
- 3.2.4 the winding-up or deregistration of the mandator or mandatary, if a juristic person;
- 3.2.5 the mandatary becoming a defaulter in terms of the JSE rules;
- 3.2.6 the mandatary ceasing to be a member of the JSE.
- 3.3 In the event of this contract terminating on any of the grounds set out in 3.1 and 3.2 above (other than the death of the mandator), the committee shall be entitled to apply the JSE's rules

to money-broking transactions effected by the mandatary pursuant to this contract and that are still outstanding.

4. Duties and rights of mandatary

4.1 The mandatary undertakes to –

- 4.1.1 at all times act with the utmost good faith towards the mandator;
- 4.1.2 conclude money-broking transactions with banks, resulting in either fixed deposit or call accounts maintained by the mandatary with the banks concerned being opened or credited, utilising money received from the mandator for that purpose;
- 4.1.3 monthly, in arrears, deliver, or cause to be delivered, to the mandator a statement reflecting, in respect of the preceding month, the following:
 - 4.1.3.1 All amounts invested and withdrawn;
 - 4.1.3.2 the dates and terms of all investments allocated to the mandator, including the names of the banks with which the deposits have been made, the interest rates applicable to the deposits and received by the mandator, and the repayment details;
 - 4.1.3.3 the total (gross) amount of interest earned during that month, for the benefit of the mandator, from each bank with which deposits have been made;
 - 4.1.3.4 the total amounts of all deposits allocated to the mandator and the names of the banks by which such deposits are held at the date of the statement;
 - 4.1.3.5 the nature of all documents held in safe custody in connection with a money-broking transaction, and the place or places at which such documents are so held; and
 - 4.1.3.6 the actual fee, reflected in Rand or as a percentage, charged by the mandatary to the mandator for that month;
- 4.1.4 deposit, before the close of business on the day of receipt of any money for investment from the mandator, such money in a call account maintained by the mandatary with a bank if such money has not by then already been deposited in a current, fixed deposit or other interest bearing account with a bank in terms of this contract;
- 4.1.5 take all reasonable and necessary steps, to recover amounts due by a bank, including *mora* interest, in terms of a money-broking transaction, always provided that such steps are taken at the expense and risk of the mandator; and

4.1.6 pay out to the mandator, on receipt of payment from the bank, the amount due to the mandator, unless instructed to reinvest such amount for the benefit of the mandator.

4.2 The mandatary may deposit money accepted from the mandator into an account maintained by the mandatary with a bank, irrespective of whether such money is so deposited together with money so accepted by the mandatary from other mandators.

5. Acknowledgements and undertakings by the mandator

5.1 The mandator acknowledges that –

5.1.1 the ultimate risk and benefit in all money-broking transactions concluded in terms of this contract of mandate shall be borne by and accrue to the mandator;

5.1.2 the mandatary does not borrow from the mandator the money entrusted by the mandator to the mandatary for purposes of concluding a money-broking transaction;

5.1.3 subject to the provisions of paragraph 4.1.5 above, neither the mandatary, in so far as he acts within the limits of this mandate, nor the JSE assumes any liability in respect of a bank's failure to meet its commitments in terms of a money-broking transaction;

5.1.4 the mandatary may, for the purpose of concluding a money-broking transaction, pool funds received from the mandator with funds received from other mandators, provided always that the mandator is allocated *pro rata* the benefits and risks of such pooled deposits.

5.2 The mandator undertakes –

5.2.1 carefully to peruse and consider all statements rendered to him pursuant to paragraph 4.1 above, and forthwith to advise the mandatary, in writing, of any money-broking transactions from which the mandator wishes to withdraw or that the mandator wishes to have terminated as soon as the mandatary may lawfully procure such withdrawal or termination;

5.2.2 forthwith to notify the mandatary in writing if there is anything contained in any statement referred to in paragraph 4.1, above, that is not understood or that is believed to be incorrect and, furthermore, undertakes likewise to notify the mandatary if the mandator does not receive a statement in any month: Provided that if the mandator does not receive a satisfactory explanation from the mandatary in reply to the mandator's notification to the mandatary, as aforesaid, the mandator shall be entitled to advise, within a reasonable time, the Director: Surveillance of the JSE of such lack of satisfaction and, at the same time, deliver to the Director: Surveillance of the JSE a copy of the relevant explanations and correspondence.

6. Remuneration of the mandatary

In consideration for the services to be rendered by the mandatary to the mandator pursuant to this contract, the mandator shall pay to the mandatary each month a maximum fee calculated in accordance with the schedule marked "A" attached to this contract.

7. *Domicilium citanti et executandi*

- 7.1 Each of the parties hereto chooses its *domicilium citanti et executandi* for the purposes of this contract and at which all notices and processes may be served as follows:

The mandator: Postal address:	
Physical address for deliveries:	
Telefacsimile No: Telephone No:	
The mandatary: Postal address	
Physical address for deliveries:	
Telefacsimile No: Telephone No:	

- 7.2 Either party hereto may change any of the above details by written notice delivered to the other party.

8. Whole contract

This document contains all the terms of the contract of mandate between the parties. No warranty, representation or term not contained herein shall be binding on the parties. No modification or amendment and no consensual cancellation of this contract shall be valid unless reduced to writing and signed by both parties.

Signed at on this day of 19

As witnesses:

1.

Mandator

2.

Signed at on this day of 19

Prepared by:

As witnesses:

1.

.....

Mandatar

2.

Prepared by: