

SOUTH AFRICAN RESERVE BANK

No. 2172

14 December 1994

BANKS ACT, 1990**DESIGNATION OF AN ACTIVITY NOT FALLING WITHIN THE MEANING OF "THE BUSINESS OF A BANK" (COMMERCIAL PAPER)**

Under paragraph (cc) 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, Deputy Registrar of Banks, hereby designate, with the approval of the Minister of Finance, and with effect from 1 January 1995, the activity set out in paragraph 2 of the Schedule, and which is performed in accordance with the conditions set out in paragraph 3 of the Schedule, as an activity that does not fall within the meaning of "the business of a bank".

C F WIESE,
Deputy Registrar of Banks

SCHEDULE***Definitions***

1. In this Schedule, "the Act" means the Banks Act, 1990 (Act No. 94 of 1990), and any word or expression to which a meaning has been assigned in the Act shall bear such meaning and, unless the context otherwise indicates-

"Central Government" means the Central Government as defined in regulation 1 of the Regulations;

"commercial paper" means-

- (a) any written acknowledgement of debt irrespective of whether the maturity thereof is fixed or based on a notice period, and irrespective of whether the

rate at which interest is payable in respect of the debt in question is a fixed or floating rate; and

- (b) debentures or any interest-bearing written acknowledgement of debt issued for a fixed term in accordance with the provisions of the Companies Act, 1973 (Act No. 61 of 1973),

but does not include bankers' acceptances;

"Companies Act" means the Companies Act, 1973 (Act No. 61 of 1973);

"company" means a company as defined in section 1 of the Companies Act;

"holding company" means a holding company as defined in section 1(4) of the Companies Act;

"issuer" means a person issuing commercial paper under the provisions of this Notice;

"listed company" means a public company, the securities of which are included in the list of securities kept by the committee of the Johannesburg Stock Exchange in terms of section 16(a) of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), but does not include a public company, the securities of which are included exclusively under the sectors "Development Capital" or "Venture Capital" in the list of securities kept by the committee of the Johannesburg Stock Exchange in accordance with the provisions of the aforesaid Act;

"the Regulations" means the Regulations relating to Banks, made under section 90 of the Act;

"ultimate borrower" means an ultimate borrower as contemplated in paragraph 3(2);

"wholly owned subsidiary" means a wholly owned subsidiary as defined in section 1 of the Companies Act.

Designated activity

2. The acceptance of money from the general public against the issue of commercial paper in accordance with the conditions set out in paragraph 3.

General conditions for the issue of commercial paper

3. The issue of commercial paper in terms of this Notice shall be subject to the following conditions:

Denominations and related matters

- (1) Commercial paper (hereinafter in this subparagraph referred to as "the instruments") may-

- (a) be issued or transferred only in minimum denominations equal to or

greater than R1 million; and

- (b) be issued only by-
 - (i) a listed company;
 - (ii) a company that at a point in time not earlier than 18 months prior to the proposed issue of the commercial paper held net assets, as certified by its auditors and reflected in its audited financial statements, to a total value exceeding R100 million: Provided that in the calculation of the value of such net assets-
 - (aa) intangible assets that are not readily marketable shall be excluded; and
 - (bb) the total amount of the company's off-balance-sheet liabilities and contingent liabilities shall be deducted; or
 - (iii) any other juristic person authorised by the Registrar in writing to issue commercial paper in accordance with the provisions of this Notice and subject to such other conditions as the Registrar may determine in such written authorization,

unless-

- (A) the instruments are listed on a recognized financial exchange; or
- (B) the instruments are endorsed by a bank; or
- (C) the instruments are issued for a period of longer than five years; or
- (D) the instruments are issued by the Central Government; or
- (E) the instruments are backed by an explicit Central Government guarantee.

Ultimate borrower

- (2) Only the following entities may be the ultimate borrower of money obtained from the general public against the issue of commercial paper, namely-
 - (a) the issuer; or
 - (b) in the case where the issuer is a company-
 - (i) a wholly owned subsidiary of the issuer; or
 - (ii) a holding company of the issuer; or

- (c) in the case where the issuer is a juristic person other than a company, any other juristic person that would have been a wholly owned subsidiary or holding company of the issuer-
 - (i) had the issuer been a company; or
 - (ii) in the case where such other juristic person, too, is not a company, had both the issuer and the other juristic person been a company; or
- (d) a juristic person of which the board of directors, or in the case where such juristic person is not a company, of which the governing body, is controlled by and customarily acts in accordance with the directions or instructions of the issuer.

Market-making

- (3) (a) No market may be made in unlisted commercial paper issued for a period of longer than five years; and
- (b) commercial paper may not be utilised, by means of market-making therein or in any other manner, to obtain overnight funding.

Purpose

- (4) The funds to be raised through the issue of commercial paper may be so raised solely for the purpose of the acquisition by the ultimate borrower of operating capital and may not, except in the case of funds so raised by an institution specified in subparagraph (1)(D), be applied, directly or indirectly, for the granting of money loans or credit (other than customary credit in respect of the sale of goods or the provision of services by the issuer of such commercial paper) to the general public.

Disclosure in placing documents

- (5) An issuer of commercial paper, except an issuer referred to in subparagraph (1)(D), shall, in a placing document or prospectus relating to such issue of commercial paper, disclose at least the following information:
 - (a) The name of the issuer, and, in the case where the issuer is not the ultimate borrower, the name of the ultimate borrower, as a heading on the face of the placing document or prospectus, thereby excluding the disclosure of the name of any agent;
 - (b) a statement in which it is confirmed that the issuer is a going concern and can in all circumstances be reasonable expected to meet its commitments, thereby reflecting the adequacy of the liquidity and solvency of the issuer;

- (c) the name of the auditor of the issuer;
- (d) the total amount of commercial paper already issued by the issuer, as well as the estimated amount of commercial paper still to be issued by the issuer during the current financial year;
- (e) all other information that may reasonably be necessary to enable the lender to ascertain the nature of the financial and commercial risk of his investment;
- (f) whether or not there has been any material adverse change in the issuer's financial position since the date of its last audited financial statements;
- (g) whether or not the particular issue is to be listed;
- (h) the specific operational purpose to which the funds to be raised through the issue of the commercial paper are assigned;
- (i) whether the commercial paper is to be secured or unsecured; and
- (j) confirmation by the auditor of the issuer that the issue complies in all respects with the provisions of this Notice;

and such a placing document or prospectus shall be accompanied by the issuer's latest audited financial statements, provided that such financial statements-

- (i) shall be in respect of a financial year end not earlier than 18 months prior to the date of issue of the placing document or prospectus; and
- (ii) shall comply with generally accepted accounting practice and with the requirements for annual financial statements and interim reports set out in Schedule 4 of the Companies Act.

Signing and date of placing document or prospectus

- (6) (a) A placing document or prospectus relating to the issue of commercial paper shall-
 - (i) in the case where the issuer is a company, be signed by two directors of such company, or if such company has only one director, by that director and by a senior official of such company; or
 - (ii) in the case where the issuer is a juristic person other than a company, be signed by two senior officials of such juristic person.
- (b) Where a placing document or prospectus has been signed by the

persons as provided in subparagraph (6)(a)(i) or (6)(a)(ii) of this paragraph, such signatories of the placing document or prospectus shall be deemed to have authorized the issue of such placing document or prospectus.

- (c) Every signature to a placing document or prospectus shall be dated and the latest of such dates shall be deemed to be the date of the placing document or prospectus.

Disclosure on certificate

(7) On every certificate issued in respect of commercial paper shall be disclosed at least the information prescribed in subparagraphs (5)(a), (5)(b) and (5)(j) of this paragraph.

Statutory returns

(8) A bank that endorses commercial paper issues as contemplated in this Notice shall clearly indicate in its return on form DI 100, as prescribed in the Regulations, that component of its business that relates to such endorsements.

Returns by issuers of commercial paper

(9) All issuers of commercial paper shall furnish the Registrar quarterly, within fifteen business days immediately following upon the quarter-end to which it relates, with a return in the form of the Annexure to this Notice in respect of the immediately preceding quarter.

ANNEXURE

RETURN CONCERNING COMMERCIAL PAPER

(Confidential and not available for inspection by the public)

The purpose of this return is the collation of economic statistics. It is not used for supervisory purposes or for the enforcement of the Banks Act, 1990.

Quarter ended

Name of reporting institution
 Address
 Contact person
 Telephone number
 Facsimile number

(All amounts to be rounded off to be the nearest R'000 and shown in A at nominal value)

A. Commercial paper: issued, redeemed and outstanding	Endorsed ⁽¹⁾	Not endorsed	Total
Outstanding at beginning of quarter
Issued during quarter
Redeemed during quarter
Outstanding at end of quarter
B. New issues			
Remaining term of new issues ⁽²⁾
Rate of return on new issues (Percentage) ⁽²⁾

Completed returns⁽³⁾ must be sent to:

The Registrar of Banks
 P O Box 8432
 PRETORIA
 0001

⁽¹⁾ "Endorsed" includes any underwriting or guarantee by a bank.

⁽²⁾ If required, attach schedules.

⁽³⁾ A return must be completed for each quarter in which commercial paper issued is outstanding, whether or not any other transactions occurred during the reporting quarter, and must be furnished within fifteen business days immediately following upon the quarter-end to which the return relates.