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IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO \_\_\_\_\_

In the matter between:

SOUTH AFRICAN RESERVE BANK	Applicant
and	
<u>BARIT</u> , LAWRENCE	First Respondent
<u>BARIT</u> , SHIMON	Second Respondent
<u>DUERR</u> , MICHAEL	Third Respondent
<u>DUERR</u> , SOPHIA MARY	Fourth Respondent
<u>DUERR</u> , JOSEPHINE JOHANNA	Fifth Respondent
<u>DÜRR</u> , FREDERIC MICHAEL	Sixth Respondent
<u>DÜRR</u> , CAROLIN CHARLOTTE	Seventh Respondent
<u>DÜRR</u> , PETER	Eighth Respondent
<u>DÜRR</u> , ERNST ALBERT	Ninth Respondent
<u>DÜRR</u> , ELFRIEDE LUISE	Tenth Respondent
<u>DÜRR</u> , WERNER MARKUS	Eleventh Respondent
<u>GUIZZARDI</u> , GINA	Twelfth Respondent
<u>GUIZZARDI</u> , OSCAR	Thirteenth Respondent
<u>GUIZZARDI</u> , MANRICO	Fourteenth Respondent
<u>HATHORN</u> , CHRISTOPHER BLAIKIE	Fifteenth Respondent
<u>HATHORN</u> , WALTER PIPER	Sixteenth Respondent
<u>JOUBERT</u> , GEORGE ROLLAND	Seventeenth Respondent
<u>JOUBERT</u> , SALLY HELEN HANSCOMB	Eighteenth Respondent

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<u>LANG</u> , MICHAEL	Nineteenth Respondent
<u>SMUDE-LANG</u> , SIBYLLA	Twentieth Respondent
<u>LANG</u> , NICHOLAS HENDRIK	Twenty-First Respondent
<u>LANG</u> , HERMANN WERNER	Twenty-Second Respondent
<u>MUNNIK</u> , ZACHARIA PETRONELLA	Twenty-Third Respondent
<u>MEYER</u> , HENDRIK	Twenty-Fourth Respondent
<u>MEYER</u> , GWENDOLINE MILDRED	Twenty-Fifth Respondent
HENDRIK MEYER N.O. IN HIS CAPACITY AS TRUSTEE FOR THE TIME BEING OF THE H MEYER FAMILY TRUST	Twenty-Sixth Respondent
GWENDOLINE MILDRED MEYER N.O. IN HER CAPACITY AS TRUSTEE FOR THE TIME BEING OF THE H MEYER FAMILY TRUST	Twenty-Seventh Respondent
IVO MEYER N.O. IN HIS CAPACITY AS TRUSTEE FOR THE TIME BEING OF THE H MEYER FAMILY TRUST	Twenty-Eighth Respondent
<u>PRIEBATSCH</u> , CHARLES DAVID	Twenty-Ninth Respondent
THE MASTER OF THE HIGH COURT	Thirtieth Respondent

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**APPLICANT'S FOUNDING AFFIDAVIT**

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I, the undersigned

JOHANNES JURGENS DE JAGER

do hereby make oath and say that –

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1 I am an adult male and an admitted advocate of the High Court of South Africa. I hold the position of General Counsel in the Legal Services Department ("LSD") of the South African Reserve Bank ("the Reserve Bank"), the applicant in this application. I am duly authorised to institute this application and to depose to this affidavit on the Reserve Bank's behalf.

2 In my capacity as General Counsel, I have been involved in the development of this matter over many years and I have also had unlimited access to all official documentation which forms part of the official records of the LSD.

3 Save where otherwise indicated, the facts contained in this affidavit are within my own personal knowledge and are, to the best of my belief, both true and correct.

**A. INTRODUCTION**

4 The applicant is the South African Reserve Bank, the central bank of the Republic of South Africa ("South Africa"). The Reserve Bank derives its authority and status from section 223 of the Constitution. The Reserve Bank is an organ of state as defined in section 239 of the Constitution, and is imbued with juristic personality pursuant to section 2 of the South African Reserve Bank Act 89 of 1998 ("the Act").

5 The Reserve Bank is one of the few central banks in the world that has private shareholders.

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- 6 The provision of private shareholding in the Reserve Bank is based on the concept of shared community representation and participation in the Bank. It is intended to enhance the independence, transparency and accountability of the Bank, in the ultimate interests of the general public of the Republic of South Africa.
- 7 The private shareholding in the Bank is also derived from the premise that the more representative a board of a central bank is of the wider community, the more likely it is of gaining the support and acceptance of the general public.
- 8 In terms of section 21(1) of the Act, there are, at present, two million issued shares in the Reserve Bank which are held by private shareholders. There are no restrictions as to who may hold shares in the Reserve Bank. Shareholders may be domestic or foreign, natural or juristic persons.
- 9 However, there are restrictions on how many shares a shareholder may hold. The restriction on private shareholding in the Reserve Bank has been designed to prevent certain members of the public from exercising a disproportionate influence over the affairs of the Reserve Bank. It is that restriction which lies at the heart of this application.
- 10 The Reserve Bank's objectives are set out in section 224(1) of the Constitution. The section provides that –

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*"...the primary object of the South African Reserve Bank is to protect the value of the currency in the interest of balanced and sustainable economic growth in the Republic"*

- 11 Section 224(2) of the Constitution entrenches the independence of the Reserve Bank by providing that in pursuit of the primary objective referred to in section 224(1) of the Constitution, the Reserve Bank must perform its functions independently "*without fear, favour or prejudice*".
- 12 In line with the Reserve Bank's objectives and the purpose of a central bank, in the event that profits are realised by the Reserve Bank, shareholders receive a fixed dividend at a rate of ten percent (10%) per annum of the nominal value of their shares. This amounts to a dividend of R0.10 per share per annum.
- 13 In terms of sections 22 and 23 of the Act, restrictions are placed on the right to hold or acquire shares in the Reserve Bank and on the voting rights attached to those shares. Furthermore -
  - 13.1 Section 22(1)(a) of the Act provides that no shareholder is entitled to hold, or hold in aggregate with his associates, more than 10,000 shares in the Reserve Bank;
  - 13.2 an "*associate*", in relation to a shareholder, is defined in section 1 of the Reserve Bank Act as -

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"(a) *if the shareholder is a natural person, means —*

- (i) *a close relative of the shareholder; or*
- (ii) *any person who has entered into an agreement or arrangement with the shareholder, relating to the acquisition, holding or disposal of, or the exercising of voting rights in respect of, shares of the Bank;*

(b) *if the shareholder is a juristic person —*

- (i) *which is a company, means any subsidiary or holding company of that company, any other subsidiary of that holding company and any other company of which that holding company is a subsidiary;*
- (ii) *which is a close corporation registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), means any member thereof as defined in section 1 of that Act;*
- (iii) *which is not a company or a close corporation as contemplated in this paragraph, means another juristic person which would have been a subsidiary of the first-mentioned juristic person—*
  - (aa) *had such first-mentioned juristic person been a company; or*
  - (bb) *in the case where that other juristic person, too, is not a company, had both the first-*

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*mentioned juristic person and that other juristic person been a company;*

*(iv) means any person in accordance with whose directions or instructions the board of directors of or, in the case where the juristic person is not a company, the governing body of the juristic person is accustomed to act; and*

*(c) in respect of all shareholders, being either natural or legal persons —*

*(i) means any 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 accustomed to act in accordance with the directions or instructions of the shareholder; and*

*(ii) includes any trust controlled or administered by the share - holder.";*

13.3 section 22(2) creates an exception to this prohibition for persons who held shares in excess 10,000 at the commencement of the Reserve Bank Amendment Act of 2010;

13.4 section 22(6) of the Act provides that, in the event that a shareholder holds more than the 10,000 shares referred to in section 22(1), he is obliged to dispose of the shares held in excess of 10,000 as soon as practicable;

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- 13.5 section 23(1) of the Act provides that, subject to the provisions of subsections (2) and (3), a shareholder shall be entitled to one vote in respect of every 200 shares held of which he has been the registered shareholder for more than six months prior to the meeting of shareholder;
- 13.6 section 23(2) of the Act provides that no shareholder is entitled to exercise votes in respect of any shares he holds in excess of 10,000;
- 13.7 section 23(3) provides that a shareholder who is not ordinarily resident in South Africa is not entitled to vote at any meeting of shareholders.
- 14 Section 22(1)(b) of the Act provides the Reserve Bank with a remedy when a shareholder breaches the 10,000 cap on shareholding. In this regard, the section provides that -

*"if it appears that a shareholder holds, or holds in aggregate with his, her or its associates more than 10 000 shares in the Bank in contravention of this section or any other provision of this Act, the Bank may approach a court with jurisdiction for an appropriate order to redress the matter, which order may include, but is not limited to, an order for the disposal of shares in the Bank at a price per share and subject to such terms, conditions and restrictions as the court may determine."*

- 15 The respondents in this application are all persons who hold, in aggregate with their associates, shares in excess of 10,000 in the Reserve Bank and the

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Reserve Bank has accordingly approached the court in terms of section 22(1)(b) of the Act for an order requiring the disposal of those shares.

16 This affidavit is structured as follows -

16.1 first, I set out the details of the respondents and the methods of service for each of them;

16.2 secondly, I deal with this court's jurisdiction;

16.3 thirdly, I explain the steps taken to avoid the need to bring this application;

16.4 fourthly, I detail the background facts to this application;

16.5 fifthly, I describe the provisions of the Amendment Act and the Regulations which followed it; and

16.6 finally, I describe and motivate for the relief sought in this application.

## **B. THE RESPONDENTS**

17 In this section of the affidavit, I set out the details of the thirty respondents. I have grouped these respondents in accordance with the method by which the application will be served on them.

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18 Thus, I deal first with the respondents for which edictal citation orders will be necessary to effect service. I then deal with the respondents for whom orders of substituted service will be obtained. Finally, I deal with those respondents who will be served with this application in the ordinary course.

### **Edictal citation respondents**

19 The third to eleventh, nineteenth and twentieth respondents all reside in Germany. As a consequence, the Reserve Bank has, contemporaneously with the institution of these proceedings, made application to the court for leave to sue the third to eleventh, nineteenth and twentieth respondents by way of edictal citation.

20 In the edictal citation application, the Reserve Bank as sought permission from the above Honourable Court to serve the abovementioned notice of motion on the –

20.1.1 third to eleventh respondents at their residential addresses in Germany (as detailed below) by an appropriately qualified person; and

20.1.2 nineteenth and twentieth respondents –

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20.1.2.1 at their postal address, being Seidiek 20, D-46286 Dorsten, Germany; and/or

20.1.2.2 by way of publication in both a regional and national newspaper; and/or

20.1.2.3 by e-mail transmission at their e-mail addresses, being, respectively, –

20.1.2.3.1 michael.lang@smude.de; and

20.1.2.3.2 s.smude@t-online.de

since the nineteenth and twentieth respondents current residential address is not known to the Reserve Bank.

**The third to eleventh respondents – The Duerr (Dürr) Family ("the Duerr Family")**

21 The third respondent is Michael Duerr ("third respondent"), an adult male and a German national, who currently resides at Huberspitzweg 2, 83727 Schliersee, Germany. The third respondent holds 10,000 (ten thousand) shares in the Reserve Bank's issued share capital in his own name.

22 The Reserve Bank is uncertain as to the correct spelling of the third respondent's family name. In this regard, I am aware that on his German

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passport, his family name is spelt "*Dürr*", whereas he anglicises his name on correspondence, spelling same "*Duerr*". For the avoidance of any doubt as to the identity of the third respondent, I attach hereto marked "**FA1**", a copy of the third respondent's passport (passport number 8263092932). ). As I show below, there is no consistency in the way in which the third respondent's family members spell their surnames. It would appear that the third respondent, his wife and daughter spell their surname Duerr because that is the anglicised spelling that they preferred to use while in South Africa, while the rest spell their surname Dürr. In the discussion of the respondents below, I annex the relevant passport or identity document of the respondent in question (with the exception of the ninth respondent who I discuss again below) and spell the name of the respondent in question in accordance with that document.

23 The fourth respondent is Sophia Mary Duerr ("fourth respondent"), an adult female, who currently resides at Huberspitzweg 2, 83727 Schliersee, Germany. Annexure "**FA1.1**" hereto is a copy of her South African identity document. The fourth respondent holds 10,000 (ten thousand) shares in the Reserve Bank's issued share capital in her own name. The fourth respondent is the third respondent's wife, making her a "close relative" of the third respondent.

24 The fifth respondent is Josephine Johanna Duerr ("fifth respondent"), a minor female who currently resides at Huberspitzweg 2, 83727 Schliersee, Germany. Annexure "**FA1.2**" hereto is a copy of her South African identity

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document. The fifth respondent holds 10,000 (ten thousand) shares in the Reserve Bank's issued share capital in her own name. The fifth respondent is the third and fourth respondent's minor daughter making them all "close relatives".

25 The sixth respondent is Frederic Michael Dürr ("sixth respondent"), an adult male who, to the best of the Reserve Bank's knowledge, currently resides at Huberspitzweg 2, 83727 Schliersee, Germany. Annexure "FA1.3" hereto is an extract from the sixth respondent's passport, which lists the sixth respondent as one of the third respondent's children (and lists his date of birth as 07.11.1994) and which spells his surname Dürr. The sixth respondent holds 10,000 (ten thousand) shares in the Reserve Bank's issued share capital in his own name. The sixth respondent is the third respondent's son and the fourth respondent's step-son (and the fifth respondent's half sibling) making them all "close relatives".

26 The seventh respondent is Carolin Charlotte Dürr ("seventh respondent"), an adult female who, to the best of the Reserve Bank's knowledge, currently resides at Huberspitzweg 2, 83727 Schliersee, Germany. Annexure "FA1.4" hereto is an extract from the third respondent's passport, which lists the seventh respondent as one of his children (and gives her date of birth as 06.11.1990) and which spells her surname Dürr. The seventh respondent holds 10,000 (ten thousand) shares in the Reserve Bank's issued share capital in her own name. The seventh respondent is the third respondent's



daughter, the fourth respondent's step-daughter, the fifth respondent's half sibling and the sixth respondents' sibling, making them all close relatives.

- 27 The eighth respondent is Peter Dürr ("eighth respondent"), an adult male who, to the best of the Reserve Bank's knowledge, currently resides at Huberspitzweg 2, 83727 Schliersee, Germany. Annexure "FA1.5" hereto is a copy of his German identity card reflecting his surname as Dürr. The eighth respondent holds 10,000 (ten thousand) shares in the Reserve Bank's issued share capital in his own name. The eighth respondent is the third respondent's brother, the fourth respondent's brother-in-law and the fifth to seventh respondents' uncle, making them all "close relatives".
- 28 The ninth respondent is Ernst Albert Dürr ("ninth respondent"), an adult male who, to the best of the Reserve Bank's knowledge, currently resides at Huberspitzweg 2, 83727 Schliersee, Germany. Annexure "FA1.6" hereto is a copy of his passport reflecting his surname as Dürr. The ninth respondent holds 10,000 (ten thousand) shares in the Reserve Bank's issued share capital in his own name. The ninth respondent is the third and eighth respondents' father, the fourth respondent's father-in-law and the fifth to seventh respondents' grandfather, making them all "close relatives".
- 29 The tenth respondent is Elfriede Luise Dürr ("tenth respondent") an adult female who, to the best of the Reserve Bank's knowledge, currently resides at Huberspitzweg 2, 83727 Schliersee, Germany. Annexure "FA1.7" hereto is a copy of her passport reflecting her surname as Dürr. The tenth respondent



holds 10,000 (ten thousand) shares in the Reserve Bank's issued share capital in his own name. The tenth respondent is the ninth respondent's wife, third and eighth respondent's mother, the fourth respondent's mother-in-law and the fifth to seventh respondents' grandmother, making them all "close relatives".

- 30 The eleventh respondent is Werner Markus Dürr ("eleventh respondent"), an adult male who, to the best of the Reserve Bank's knowledge, currently resides at Huberspitzweg 2, 83727 Schliersee, Germany. The eleventh respondent is the only one of the third to eleventh respondents in respect of which the Reserve Bank does not have a copy of an identifying document. I have, however, spelled his surname Dürr because the eleventh respondent has, to my knowledge, at all times resided in Germany, and those of the respondents who are related to the third respondent that reside in Germany appear to spell their surnames Dürr. The eleventh respondent holds 10,000 (ten thousand) shares in the Reserve Bank's issued share capital in his own name. The eleventh respondent is the third and eighth respondent's brother, the fourth respondent's brother-in-law, the fifth to seventh respondents' uncle and the ninth and tenth respondent's son making them all "close relatives".

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31 As confirmation of the "association" between the members of the Duerr family, I attach hereto marked –

31.1 "FA2", a letter from the third respondent to the Reserve Bank on 11 December 2006 in which he describes his relationship with the fourth to eleventh respondents; and

31.2 "FA3", an organogram which depicts the Duerr family family-tree and provides an overview of the familial relationships as between the third to eleventh respondents. This demonstrates that they are all "close relatives" and together hold in excess of 10,000 Reserve Bank shares.

#### **The nineteenth and twentieth respondents – The (Michael) Lang Family**

32 The nineteenth respondent is Michael Lang ("nineteenth respondent"), an adult male whose current residential address is not known to the applicant. The nineteenth respondent's current postal address is Seidiek 20, D46286 Dorsten, Germany and his email address is michael.lang@smude.de. The nineteenth respondent holds 10,000 (ten thousand) shares in the Reserve Bank's issued share capital in his own name.

33 The twentieth respondent is Sibylla Smude-Lang ("twentieth respondent"), an adult female whose current residential address is not known to the applicant. The twentieth respondent's current postal address is Seidiek 20, D46286 Dorsten, Germany and her email address is s.smude@t-online.de. The

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twentieth respondent holds 10,000 (ten thousand) shares in the Reserve Bank's issued share capital in her own name.

- 34 The nineteenth and twentieth respondents are husband and wife and are therefore close relatives. They hold together more than 10,000 Reserve Bank shares.

### Substituted service

#### **The fifteenth and sixteenth respondents – The Hathorn Family**

- 35 The fifteenth respondent is Christopher Blaikie Hathorn ("fifteenth respondent"), an adult male whose current residential address is not known to the applicant. The fifteenth respondent's current postal address is 78 Henderson Road, Pietermaritzburg. The fifteenth respondent holds 10,000 (ten thousand) shares in the Reserve Bank's issued share capital in his own name.

- 36 The sixteenth respondent is Walter Piper Hathorn ("sixteenth respondent"), an adult male whose current residential address is not known to the applicant. The sixteenth respondent's current postal address is 78 Henderson Road, Pietermaritzburg. The sixteenth respondent holds 1,010 (one thousand and ten) shares in the Reserve Bank's issued share capital in his own name. The sixteenth respondent is the fifteenth respondent's son.

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37 The fifteenth and sixteenth respondents are close relatives who together hold in excess of 10,000 shares in the Reserve Bank. They are accordingly associates for purposes of the Act.

38 The twenty-third respondent is Zacharia Petronella Munnik ("twenty-third respondent"), an adult female whose current residential address is not known to the applicant. The twenty-third respondent's postal address is P.O. Box 28176, Bothasig. The twenty-third respondent holds 10,000 (ten thousand) shares in the Reserve Bank's issued share capital in her own name. I deal more fully below (paragraph 52 and its sub paragraphs) with the reasons why the twenty-third is a party to this application.

39 Since the Reserve Bank does not have current details of the fifteenth, sixteenth, and twenty-third respondents, the Reserve Bank will, contemporaneously with the issuing of this application, apply to the above Honourable Court for leave to sue by way of substituted service on the –

39.1 fifteenth and sixteenth respondents at their Post Office Box addresses and by way of publication in –

39.1.1 the "*Daily News*", a daily local publication in Kwa-Zulu Natal;  
and

39.1.2 "*The Star*", a national daily publication in South Africa;

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39.2 the twenty-third respondent at her Post Office Box address and by way of publication in –

39.2.1 the "*Cape Argus*", a daily local publication in Cape Town; and

39.2.2 "*The Star*", a national daily publication in South Africa.

### Ordinary service

#### **The first and second respondents – The Barit Family**

40 The first respondent is Lawrence Barit ("first respondent") an adult male who currently resides at 42 Ravenswood Avenue, Birdhaven, Johannesburg. The first respondent holds 10,000 (ten thousand) shares in the Reserve Bank's issued share capital in his own name.

41 The second respondent is Shimon Barit ("second respondent") an adult male, who currently resides at 4 Riviera Close, Corner Annie Botha and James Clerk Avenue, Riviera, Johannesburg. The second respondent holds 10,000 (ten thousand) shares in the Reserve Bank's issued share capital in his own name.

42 The second respondent is the first respondent's son. They are accordingly "close relatives" and hold together more than 10,000 Reserve Bank shares.

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**The twelfth to fourteenth respondents – The Guizzardi family**



- 43 The twelfth respondent is Gina Guizzardi ("twelfth respondent"), an adult female who currently resides at 6 Nautilus Grove Flats, Uvongo. The twelfth respondent holds 10,000 (ten thousand) shares in the Reserve Bank's issued share capital in her own name.
- 44 The thirteenth Respondent is Oscar Guizzardi ("thirteenth respondent"), an adult male who currently resides at 3 Cradock Sands, Ring Road, Three Rivers, Vereeniging. The thirteenth respondent holds 10,000 (ten thousand) shares in the Reserve Bank's issued share capital in his own name. Moreover, the thirteenth respondent is the twelfth respondent's son making them "close relatives".
- 45 The fourteenth Respondent is Manrico Guizzardi ("fourteenth respondent"), an adult male who currently resides as 208 Ellamarie Court, Corner Fourteenth Avenue and Devert Street, Edenvale, Johannesburg. The fourteenth respondent holds 5,000 (five thousand) shares in the Reserve Bank's issued share capital in his own name. Moreover, the fourteenth respondent is the twelfth respondent's son and the thirteenth respondent's sibling.
- 46 The twelfth to fourteenth respondents are all close relatives and hold together more than 10,000 Reserve Bank shares. They are accordingly associates for purposes of the Act.



**The seventeenth and eighteenth respondents – the Joubert Family**



- 47 The seventeenth respondent is George Rolland Joubert ("seventeenth respondent"), an adult male currently residing at 1 Callander Street, Plettenberg Bay. The seventeenth respondent holds 10,000 shares in the Reserve Bank's issued share capital in his own name.
- 48 The eighteenth respondent is Sally Helen Hanscomb Joubert ("eighteenth respondent"), an adult female who currently resides at 1 Callander Street, Plettenberg Bay. The eighteenth respondent holds 9,200 shares in the Reserve Bank's issued share capital in her own name.
- 49 The seventeenth respondent and the eighteenth respondent are husband and wife, and are therefore close relatives who together hold in excess of 10,000 Reserve Bank shares.

**The twenty-first to twenty-third respondents – The (Nicholas) Lang Family**

- 50 The twenty-first respondent is Nicholas Hendrik Lang ("twenty-first respondent"), an adult male who currently resides at 102 Vryburger Avenue, Bothasig. The twenty-first respondent holds 10,000 (ten thousand) shares in the Reserve Bank's issued share capital in his own name.
- 51 The twenty-second respondent is Hermann Werner Lang ("twenty-second respondent"), an adult male currently residing at 38 Amstel Street, Bothasig.  
The twenty-second respondent –
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- 51.1 is the twenty-first respondent's son; and
- 51.2 holds 10,000 (ten thousand) shares in the Reserve Bank's issued share capital in his own name.
- 52 The twenty-third respondent (whose fuller particulars are set out in paragraph 38 above) –
- 52.1 is the twenty-first respondent's daughter;
- 52.2 is the twenty-second respondent's sibling; and
- 52.3 holds 10,000 (ten thousand) shares in the Reserve Bank's issued share capital in her own name.
- 53 The twenty-first to twenty-third respondents are all close relatives and hold together more than 10,000 Reserve Bank shares.

**The twenty-fourth to twenty-eight respondents – The Meyer family and the trustees for the time being of the H Meyer Family Trust**

- 54 The twenty-fourth respondent is Hendrik Meyer ("twenty-fourth respondent"), an adult male currently residing at 4 Tenby Street, Somerstrand, Port Elizabeth. The twenty-fourth respondent holds 10,000 (ten thousand) shares in the Reserve Bank's issued share capital in his own name.
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- 55 The twenty-fifth respondent is Gwendoline Mildred Meyer ("twenty-fifth respondent"), an adult female currently residing at 4 Tenby Street, Somerstrand, Port Elizabeth. The twenty-fifth respondent currently holds 10,000 shares in the Reserve Bank's issued share capital in her own name.
- 56 The twenty-fourth and twenty-fifth respondents are husband and wife and are therefore close relatives who together hold more than 10,000 Reserve Bank shares.
- 57 The twenty-sixth respondent ("twenty-sixth respondent") is Hendrik Meyer N.O, an adult male cited herein in his capacity as trustee for the time being of the H Meyer Family Trust, a Trust established and registered with the Master of the above Honourable Court in accordance with the laws of South Africa. This application will be served on the twenty-sixth respondent at his personal residence being 4 Tenby Street, Somerstrand, Port Elizabeth.
- 58 The twenty-seventh respondent is Gwendoline Mildred Meyer N.O. ("twenty-seventh respondent"), an adult female cited herein in her capacity as trustee for the time being of the H Meyer Family Trust. This application will be served on the twenty-seventh respondent at her personal residence being 4 Tenby Street, Somerstrand, Port Elizabeth.
- 59 The twenty-eighth respondent is Ivo Meyer N.O. ("twenty-eighth respondent") an adult male cited in his capacity as trustee for the time being of the H Meyer

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Family Trust. This application will be served on the twenty-eighth respondent at his personal residence being E2376 Second Avenue, Somerstrand, Port Elizabeth.

60 The H Meyer Family Trust holds 10,000 shares in the Reserve Bank's issued share capital.

61 The H Meyer Family Trust is an associate of the twenty-fourth and twenty-fifth respondents because the H Meyer Family Trust is administered and controlled by, *inter alia*, the twenty-fourth and twenty-sixth respondents.

**The twenty-ninth and thirtieth respondents – the Priebatsch family and the Master**

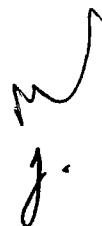
62 The twenty-ninth respondent is Charles David Priebatsch ("twenty-ninth respondent"), an adult male currently residing at 59 Hume Road, Dunkeld. The twenty-ninth respondent holds 10,000 (ten thousand) shares in the Reserve Bank's issued share capital in his own name.

63 Mr Richard Rudolf Priebatsch, who, prior to his death lived at 59 Hume Road, Dunkeld is assumed to be a close relative of the twenty-ninth respondent given their common surnames and common abodes. Prior to his death, Mr Richard Rudolf Priebatsch held 10,000 (ten thousand) shares in the Reserve Bank's issued share capital in his own name.

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- 64 Together, the twenty-ninth respondent and Mr Richard Rudolf Priebatsch held in excess of 10,000 Reserve Bank shares.
- 65 It appears that Mr Richard Rudolf Priebatsch died intestate and that no executor for his estate has yet been appointed. As a result, the Master of the High Court is cited as the thirtieth respondent in this application because Mr Richard Rudolf Priebatsch's estate currently vests in the Master until an executor for the estate has been appointed.
- 66 The Master has also been cited in respect of the intestate estates of the late Graeme Dunbar Wood, who, prior to his death, held 10,000 Reserve Bank shares in his own name, and Iris Stella Wood, who, prior to her death, held 3,300 Reserve Bank shares in her own name. To the best of the Reserve Bank's knowledge, no executor has yet been appointed for these estates.
- 67 Mr and Mrs Wood were husband and wife and therefore qualified as "close relatives" holding together more than 10,000 Reserve Bank shares.
- 68 The respondents are not the only shareholders in the Reserve Bank who prior to the institution of this application were associates and held in aggregate more than 10,000 Reserve Bank shares.
- 69 A number of other parties also held shares in excess of 10,000 with their associates but those parties took advantage of an opportunity afforded to them by the Reserve Bank voluntarily to sell their shares in excess of 10,000



and, as a result, to avoid this application. I deal in more detail with that opportunity below. However, I first set out the grounds for this court's jurisdiction.

### C. JURISDICTION

70 There are three categories of respondents in this application for jurisdiction purposes.

71 *First*, there is the category of respondents who reside within the territorial jurisdiction of this court. The court has jurisdiction over these respondents by virtue of section 21(1) of the Superior Courts Act 10 of 2013.

72 *Secondly*, there is the category of respondents who reside within the Republic but beyond the jurisdiction of this court. This court nonetheless has jurisdiction over these parties by virtue of section 21(1) of the Superior Courts Act because the cause of action in this matter arose within the jurisdiction of this court.

73 This application is concerned with the unlawful holding of Reserve Bank shares. Those shares are acquired and held pursuant to a sale conducted through the Over the Counter Share Transfer Facility ("OTCSTF"), which operates from the Reserve Bank building at 370 Helen Joseph Street, Pretoria. The share register which records the shares held by each of these respondents is also held in Pretoria. The share register records the

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acquisitions and transfers of shares. Furthermore, the General Counsel of the Reserve Bank who, in terms of the Rule 4.6.3 of the OTCSTF Rules, is given a general power of attorney by all shareholders to deal with the Reserve Bank shares on their behalf also works from the Reserve Bank building in Pretoria. I deal in more detail below with the OTCSTF Rules.

74 As a result of these facts, all the conduct associated with the purchase and transfer of Reserve Bank shares takes place within Pretoria and accordingly, this court has jurisdiction to grant an order compelling the sale of those shares held by associates in excess of 10,000.

75 *Thirdly*, there is a category of respondents who reside beyond the borders of the Republic. It is trite that, provided the requirements for the grant of a mandatory order are satisfied by facts within the territorial area of jurisdiction of the relevant court, our courts have jurisdiction to grant such orders against *peregrini* respondents.

76 As I have set out above, the facts supporting the relief sought in this application all occurred within the jurisdiction of this court.

77 Although the shares in the Reserve Bank are not dematerialised, and hence the *peregrini* respondents may hold their share certificates for their shares beyond the borders of the Republic, this is no bar to this court's jurisdiction or to the effectiveness of any order granted by the court.

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- 78 This is so because of the OTCSTF Rules, which have been adopted by the board of the Reserve Bank. A copy of the Rules is attached marked "FA4".
- 79 The *peregrini* respondents obtained their shares pursuant to the Rules. The Rules are therefore binding on these respondents.
- 80 Rule 4.6.1 provides the Reserve Bank with the powers of restitution against shareholders where there has been a breach of the provisions of the Act (as is the present case).
- 81 Rule 4.6.2 empowers the Transfer Secretary of the Reserve Bank to take such steps as may be necessary to ensure compliance with the Act in cases where the Act has been contravened. Such steps include, *inter alia*, the disposal of the Reserve Bank shares that form the subject matter of this application.
- 82 Rule 4.6.3 enables the Reserve Bank to give effect to the provisions of the Act (which includes an application under section 22(1)(b)). In this regard, a shareholder who offers his shares for sale, nominates and appoints the General Counsel of the Reserve Bank as his attorney and agent and grants such attorney the power and authority to do all acts and sign such documents as may be necessary to implement any transactions concluded in pursuance of any remedies of the Bank arising from a breach of the provisions of the Act.

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83 Given that the *peregrini* respondents are bound by these Rules, I submit that the effectiveness of any order granted by this Court under section 22(1)(b) of the Act may be achieved notwithstanding the fact that share certificates held by such *peregrini* respondents may be located beyond the borders of South Africa.

**D. THE STEPS TAKEN TO AVOID THIS APPLICATION**

84 In order to obviate the necessity of launching this application, in March this year, the Reserve Bank addressed letters to all the parties who at that time held, in aggregate with their associates, more than 10,000 Reserve Bank shares in breach of the Act.

85 All of the letters were identical except for those paragraphs of each letter that explained the associate relationship of each addressee. In this regard, the letters addressed to the respondents asserted the same bases for the associate relationships as those that have been detailed fully above.

86 In the letters, the Reserve Bank referred to the fact that its records showed that the addressees were holding shares in excess of 10,000 in breach of section 22(1) of the Act.

87 The addressees were given an opportunity to dispute this conclusion drawn from the Reserve Bank records. If no dispute was received from the addressees within the period contemplated in the letter, the letter indicated

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that the Reserve Bank would assume that the addressees accepted that they were associates holding in excess of 10,000 shares.

88 The letter afforded the shareholders an opportunity to sell the shares held by them in excess of 10,000. In order to take advantage of this opportunity, the addressees had to notify the Reserve Bank by 6 May 2014 of their undertaking voluntarily to sell their shares in excess of 10,000 by 31 March 2015.

89 The Reserve Bank also tendered assistance to the addressees in the disposal of their shares, if required.

90 There are currently a total of 508 910 Reserve Bank shares held in contravention of section 22 of the Act.

91 This required a total of 46 letters of demand to be sent to the relevant "associate" shareholders. As an example, a copy of the letter addressed to the third respondent is attached hereto marked "FA5". However, in order to avoid prolixity, the letters addressed to the remaining respondents have not been attached hereto. These remaining letters will be made available to the respondents upon request and to the above Honourable Court at the hearing of this application.

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92 Nineteen responses were received to those letters and thirteen shareholders provided the Bank with irrevocable undertakings to sell their shares by 31 March 2015.

93 As a result of these undertakings, 166 400 of the shares held by those shareholders, who have provided the Reserve Bank with undertakings, will be sold by 31 March 2015.

94 That leaves 297 810 shares which are held by the respondents in this application. Of those, 178 510 shares must be sold in order to bring the respondents in line with the requirements of section 22 of the Act.

95 The table below reflects the date on which each letter was sent to each respondent and records whether or not a response was received by the Reserve Bank. Where applicable, the table reflects the date of the further response despatched by the Reserve Bank -

RESPONDENT	DATE OF LETTER	RESPONSE RECEIVED	DATE OF FURTHER RESPONSE FROM THE RESERVE BANK (WHERE APPLICABLE)

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First	7 March 2014	31 March 2014, a copy of which is attached hereto marked "FA6"	25 April 2014, a copy of which is attached hereto marked "FA7"
Second	7 March 2014	None	
Third	7 March 2014	24 March 2014, a copy of which is attached hereto marked "FA8"	
Fourth	7 March 2014	None	
Fifth	7 March 2014	None	
Sixth	7 March 2014	None	
Seventh	7 March 2014	None	
Eighth	7 March 2014	None	
Ninth	7 March 2014	None	
Tenth	7 March 2014	None	
Eleventh	7 March 2014	None	
Fifteenth	7 March 2014	None	
Sixteenth	7 March 2014	None	
Seventeenth	7 March 2014	20 March 2014, a copy of which is attached hereto marked "FA9"	24 April 2014, a copy of which is attached hereto marked "FA10"
Eighteenth	7 March 2014	None	

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Nineteenth	7 March 2014	None	
Twentieth	7 March 2014	None	
Twenty-First	7 March 2014	None	
Twenty-Second	7 March 2014	None	
Twenty-Third	7 March 2014	None	
Twenty-Fourth	7 March 2014	22 April 2014, a copy of which is attached hereto marked "FA11"	25 April 2014, a copy of which is attached hereto marked "FA12"
Twenty-Five	7 March 2014	None	
Twenty-Sixth, Twenty-Seventh, Twenty-Eighth (in their capacities as trustees of the H Meyer Family Trust)	7 March 2014	None	
Twenty-Ninth	7 March 2014	None	
Mr Rudolf Richard Priebatsch	7 March 2014	None	

96 Nothing set out in annexures "FA6", "FA8", "FA9" or "FA11" justifies these respondents' failure to comply with the Act.

J. M.

- 97 On 25 April 2014 the Reserve Bank addressed a letter to the first respondent in response to "FA7".
- 98 Subsequent to the despatch of annexures "FA7", "FA10" and "FA12" (sent by the Reserve Bank in response to "FA6", "FA9" and "FA11"), no further communication was received from the first, seventeenth or twenty-fourth respondents and, to date, these respondents have failed to furnish an irrevocable undertaking to sell their shares by 31 March 2015.
- 99 No response was sent by the Reserve Bank to annexure "FA8" as that letter did not call for a response. The third respondent merely stated in "FA8" that, in the light of the "*official character*" of the communication, he intended passing the communication "*on to a formally appointed and sworn-in legal expert for a precise translation from English into German.*"
- 100 On 10 July 2014, the third respondent sent a further email to the Governor of the Reserve Bank. In that email, the third respondent attacks and criticises the Governor of the Reserve Bank. The third respondent states in no uncertain terms that the Reserve Bank will not "get" his and his family's shares. Although the email is written in German, it has been translated by Ms Renate Wolf ("Wolf") into English. A copy of the German version of the email and its English translation are attached hereto as "FA13" and "FA14". Attached as "FA15" is a certificate signed by Wolf, a sworn translator of the above Honourable Court, confirming the accuracy of the translation.

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- 101 As set out in the above table, no response was received from any of the other respondents and, in particular, none of these respondents responded to the letter to deny that an association existed for the purposes of section 22 of the Act.
- 102 Letters of demand were not sent to –
- 102.1 the twelfth to fourteenth respondents given that the Reserve Bank was unable to obtain a current address for these respondents; or
- 102.2 Mr Wood and Mrs Wood given that they are deceased and the Reserve Bank has no details of an executor having been appointed to deal with their estates.
- 103 As appears from what is set out above, none of the respondents disputed the association between them which was set out in the letters of demand nor furnished the undertaking sought.
- 104 The Reserve Bank was accordingly left with no alternative but to launch this application to enforce compliance with the Act against those shareholders who did not give the requested undertaking to dispose of their shares voluntarily.

**E. THE FACTUAL BACKGROUND**

105 In or about 2006, the Reserve Bank became concerned by what appeared to be an undue concentration of its shares in the hands of a group of shareholders. The concentration of shares occurred contemporaneously with a hike in the share price. Whereas the Reserve Bank shares had previously traded consistently at around R1.00 per share, in about 2006, the shares began trading in excess of R6.00 per share.

106 Also at that time, a significant number of shares were being acquired and held by non-residents of South Africa. In fact, more than 280 000 shares were held by non-residents. There was also a great deal of shareholder activism within the governance of the Bank. Other central banks, which had also allowed for private shareholding (such as the Bank for International Settlements ("BIS") and the Belgium Central Bank), were becoming embroiled in disputes with their private shareholders. In those disputes, the shareholders were contending that their shareholding in the central bank ought to be valued in accordance with the value of the assets of the bank as opposed to the market price of the shares.

107 As a result of these developments, the Reserve Bank became concerned that an undue concentration of shares in the hands of non-residents, who cannot vote such shares, and certain other groups of shareholders, may have had ulterior purposes. These motives included an intention to -



- 107.1 "sterilize" the shares in the Reserve Bank in order to frustrate the Reserve Bank's ability to conduct the business which falls within the ambit of its objectives; and
- 107.2 obtain control over a disproportionate shareholding in the Bank in order to disrupt the governance of the Bank at its shareholders meetings so that the Bank would be forced to expropriate the shares of these "troublemaker" shareholders.
- 108 One example of such conduct concerned the activities of the third respondent and his increasing accumulation of shares over a period for various members of his family. At about this time, the third respondent had been pressing National Treasury to "*nationalise*" the private shareholding in the Reserve Bank in order for him to recover an asset-based compensation payment for the expropriation. The objective was to force the state to compensate him and his associates for their shares at well above their R1 nominal value, or even their market value, and thereby obtain a significant windfall on their investment.
- 109 The third respondent also repeatedly questioned the affairs of the Reserve Bank and the way in which it operated. He demanded financial statements (going back to 1921) and other Reserve Bank information and required certain issues (which fall outside of the domain of shareholder issues) to be placed before the general meetings of shareholders. The manner in which the third

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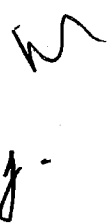
respondent interacted with the relevant officials of the Reserve Bank over this period bordered on harassment.

110 Since the introduction of the Amendment Act in 2010, the third respondent systematically attempted to dispose of his shareholding in the Reserve Bank. But he did so without any regard for the requirements and restrictions imposed on shareholding in the Reserve Bank in terms of the Act.

111 As appears from annexure "FA16" hereto, in February 2007, the third respondent attempted to acquire a further 10,000 shares in the Reserve Bank on behalf of the eleventh respondent. The application was only partially successful, owing to the limited number of shares available for purchase at that time. The third respondent therefore succeeded in acquiring only 300 shares in the Reserve Bank for the eleventh respondent.

112 When his ability to acquire shares in the Reserve Bank from the central depository became unsuccessful, the third respondent began to look to other shareholders. In this regard, I attach hereto marked "FA17" a letter addressed by the fourth respondent to the late Mr Rael Gordon ("Gordon"), who was at that date a shareholder of the Reserve Bank, enquiring whether Gordon would sell (all or some of) his 10,000 shares in the Reserve Bank to the Duerr family.

113 As his hostility towards the Reserve Bank continued to grow, the third respondent sought to include other shareholders in his scheme. The third



respondent himself expressly admits as much in an email addressed to me and Tiyani Mongwe (who was, at the time, the Company Secretary of the Reserve Bank), dated 17 January 2008 (attached hereto marked "FA18"), in which the third respondent advises the Reserve Bank that –

*"we [presumably referring to an unnamed number of shareholders in the Reserve Bank] are putting forward a motion to call an extraordinary general meeting of the shareholders of the SARB within the next weeks. There are already around 300,000 shares behind the plan, getting more by the day. Please clarify for us the details for us from your side not described in regulation 17 of the regsection [sic] 36 for conducting an extraordinary general meeting to avoid unnecessary formalities and glitches for the first 2008 EGM:"*

(Emphasis added.)

114 During February 2008, an article appeared in Noseweek Magazine, which was entitled "*How to buy the Reserve Bank*". The third respondent features prominently in the article. An online version of this article is attached hereto marked "FA19".

115 As appears from the article –

115.1 the third respondent advised the journalist who wrote the article that his families' shareholding may come in handy as a "*bargaining tool*" in resisting the construction of a new pressurised water reactor on the

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land which is adjacent to a piece of land owned by him outside Hermanus in the Western Cape;

115.2 the Duerr family had a standing offer to purchase 20,000 shares in the Reserve Bank at a price of R2.60 per share. At the time, this was the highest offer in terms of both volume and price for Reserve Bank shares;

115.3 the third respondent was continuing to lobby for an extraordinary general meeting, for which he required 10% of shareholder votes. The third respondent claimed that at that time he had more than twice that amount, without taking his own shares into account.

116 In a letter addressed by the third respondent to the then Governor of the Reserve Bank dated 9 September 2008, a copy of which is attached hereto marked "FA20", the third respondent again makes his "goal" clear. In this regard he states as follows –

*"kindly note that the group of suggestive SARB shareholders will pursue the nationalisation course from now on.*

....

*You obviously want to get rid of private SARB owners nuisance. Our common goal: nationalisation.*

*SARB is not a state corporation (what does this mean any way?), but a private and for profit company.*

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*J.*



*You are well advised to read about 88 years of SARB history before the forthcoming AGM. We will test you.*

*The creeping expropriation of the SARB owners, the shareholders comes to an end. The suggestive SARB shareholders will demand their statutory rights and stick to their obligations.*

*Face reality. Listen to the people: Amandla-Awethu."*

117 In a further article published in September 2008 in the Business Report (a copy of which is attached hereto marked "FA21") entitled "*Shareholder stirs up Reserve Bank AGM*", the following is recorded –

117.1 the third respondent states publicly that he and his family have a 5% "*stake*" in the Reserve Bank and that, with "*friends*", he could muster between 10 and 15% of the Bank's issued share capital;

117.2 at the Reserve Bank's AGM, the third respondent constantly interrupted the then Governor from the floor;

117.3 the third respondent handed out a written statement after the meeting purporting to bring important matters to shareholders' attention. In this regard, the circular accused the Governor of failing to fulfil his fiduciary duties to shareholders;

117.4 the third respondent stated that he began buying shares in the Reserve Bank for himself and his family in 2006 and continued doing so in 2007.

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The third respondent stated further that he had originally invested in the bank to "*gain credibility*" as he was opposing a proposal to establish a nuclear power station on property adjoining his own in the Western Cape. In this regard, the third respondent was quoted as saying "*now we have a working anti-nuclear movement*";

117.5 the third respondent admitted that he wanted to see the Reserve Bank nationalised.

118 A further article was published by MoneyWeb in September 2008, a copy of which is attached hereto marked "**FA22**". In that article, the third respondent is again described as a shareholder of the Reserve Bank holding "*about 5% of the Bank's stock*" who frequently interrupted the Governor at the abovementioned AGM.

119 The third respondent's shareholding in the Reserve Bank was again described as being 5% in –

119.1 an online article published in the Mail & Guardian entitled "*Belligerence abounds at Reserve Bank AGM*" in September 2008, a copy of which is attached hereto marked "**FA23**";

119.2 an online article published on Bloomberg.com entitled "*Mboweni rebukes South African Reserve Bank Shareholders at AGM*" in September 2008, a copy of which is attached hereto marked "**FA24**".

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- 120 An interview of the third respondent also took place in September 2008 during Alec Hogg's of MoneyWeb radio show. A copy of the transcript of that interview is attached hereto marked "FA25". During the course of that interview, the third respondent disclosed to Hogg that his "*whole family*" held shares (in aggregate) of up to 5% in the Reserve Bank's issued share capital.
- 121 I attach hereto marked "FA26" an article that appeared in a German online publication, Börse Online, entitled "*the Central Bank Hunter*". Attached marked "FA27" is a version of the article that has been translated into English. Attached marked "FA28" is a certificate signed by Wolf, confirming the accuracy of the translation. As appears from this article --
- 121.1 the third respondent is described as being the most influential shareholder of the Reserve Bank;
- 121.2 the third respondent is recorded as having managed to "*side step*" the limit on private shareholding in the Bank by purchasing shares in the names of family members;
- 121.3 the third respondent estimates that 5% of the shares in the Reserve Bank are held by his family, a further 5% of the shares in the Reserve Bank are held by personal friends and yet a further 5 to 10% are held by partners that have joined his business;

- 121.4 the third respondent's desire to achieve the maximum possible return on capital from his investment in the shares in the Reserve Bank is acknowledged. The third respondent states that in his opinion this would be most easily achieved through nationalisation of the Reserve Bank;
- 121.5 the third respondent opined that if the Bank were nationalised he would receive in excess of R4,200 per share. At that time, R4,200 per share was approximately 400 times the share trading price;
- 121.6 in seeking to justify the huge margin of return which such a sale price would produce, the third respondent claimed that there were many investors in China and India who *"would be prepared to pay a few million in order to have access to a political lever"*.
- 122 The following appears in a further article published in Noseweek in May 2009 (a copy of which is attached hereto marked "FA29") –
- 122.1 the third respondent has set out to convince other shareholders of the Reserve Bank to consider the real value of their shares, and those who now share his ideas currently appear to hold about 20% of the issued shares in the Reserve Bank;
- 122.2 with reference to "FA26" hereto, the third respondent may have garnered sufficient support amongst the Reserve Bank's shareholders

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to be able to force the nationalisation of the Reserve Bank, ie, to force the South African government to "buy out" the private shareholders in the Reserve Bank;

122.3 by the third respondent's estimation, a shareholder holding 10,000 shares could be holding shares worth in excess of R42,000,000 even though the shares would only have been purchased for R20,000.

123 On 19 February 2009, the third respondent responded to a "blog" posting by Mike Hewitt on [www.dollardaze.org](http://www.dollardaze.org). A blog is a discussion or informational site published on the Internet consisting of entries (posts) posted by individuals expressing opinions on a wide variety of topics of interest. In his response to Hewitt's post (which is available to view at [http://www.dollardaze.org/blog/?post\\_id=00255](http://www.dollardaze.org/blog/?post_id=00255)), the third respondent wrote –

*"I would like to get into discussion with you and other people interested, as I have a very special interest in the central banking theme. To understand them better, I collected over a period of over nearly two years shares of the only 100% privately owned central bank in the world, the South African Reserve Bank ([www.reservebank.co.za](http://www.reservebank.co.za)). My family holds now 5% of SARB and is the single biggest shareholder. We got blocked since then as we "have too much influence" (quote from Governor TT Mboweni).*

...

*The other private central banking entities are: Belgium, Greece, Switzerland, Austria, Turkey, Italy and USA. Only the first three are quoted on their respective (sic) stock exchanges. Italy and USA are*

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*owned by the banks, with Austria and Turkey only by nationals. So it leaves the Central Bank of South Africa as the only pure play, but even there, one gets bugged around.*

*I tried to lure the South Africans into nationalisation since over one year, this is the only way to an honest money system and as a teaser also the way to unlock the value in this investment.*

*In 2007, I tried to introduce honest money in South Africa through a special resolution for the AGM, but the Governor lied to me and betrayed me ever since. Nobody in the central banking fraternity is interested to rock the boat with such unpopular themes."*

124 A copy of the abovementioned post is attached hereto marked "FA30".

125 In an article entitled "*Debate to 'nationalise' Reserve Bank hots up*" (a copy of which is attached hereto marked "FA31"), which was published on 14 February 2010 in the Business Times, –

125.1 it is suggested that the third respondent had become an "*unofficial spokesman*" for shareholders holding in aggregate 20% of the Reserve Bank's shares. These shareholders intended to force the Reserve Bank into "*liquidation*" so that the assets of the Reserve Bank could be transferred into cash;

125.2 the third respondent is quoted as arguing that the net assets of the Reserve Bank which "*belong to shareholders*" exceed R12 billion; and

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- 125.3 the third respondent maintains that these assets belong to the private shareholders of the Bank and not the country as a whole.
- 126 In the months that followed, the third respondent's "activism" increased. In this regard, he regularly circulated letters to, *inter alia*, other shareholders of the Reserve Bank, the Governor, the Minister of Finance and other interested parties. By way of example, I attach hereto marked "FA32", a document circulated by the third respondent entitled "*South African Reserve Bank (SARB) – Targeting Inflation, Targeting a New Reserve Bank*". This circular appears to be the third respondent's manifesto for activism within the Bank.
- 127 On 1 April 2011, the third respondent addressed a letter to the Company Secretary of the Reserve Bank, Ms Sheenagh Reynolds, in which he congratulated her on her appointment to the aforesaid position. In the letter, the third respondent again referred to his family as holding an aggregate interest of 5% of the Reserve Bank's issued share capital. A copy of this letter is attached hereto marked "FA33".
- 128 The third respondent initially sought to dispose of his shares and, in all probability, those of his associates (including the fourth to eleventh respondents) through a proposal he made to Gradient Capital Partners LLP ("GPP") in September 2011. A copy of the third respondent's email and financial appraisal sent to GPP (which was forwarded to the Reserve Bank by GPP) is attached hereto marked "FA34".

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129 The financial appraisal prepared by the third respondent clearly sets out his intention with regard to his and his associates' shareholding in the Reserve Bank as at that date. When the third respondent's conduct was brought to the attention of the Reserve Bank, it advised GPP that the proposal made by the third respondent was in contravention of the requirements pertaining to private shareholders in the Reserve Bank.

130 As appears from annexure "FA34", the third respondent advised GPP as follows –

*"my family owns 5% of the South African Reserve Bank Ltd., the Central Bank of the Republic of South Africa (the SARB share register is attached as evidence).*

*We are willing to sell our registered outright or in a staggered approach linked to the performance and realization of the entrenched value. We are able to deliver a further 5% of the shares held by friends (identified as foreigners in the share register). Additionally all other 620 RSA resident shareholders can be addressed through our database. A third party transaction is legal.*

...

*What is our proposal?*

*Since 2006, we have attempted to unlock the real value of these unique shares, which were traded on the main board of the Johannesburg Stock Exchange from SARB's inception in 1921 to its delisting in 2002 and now are traded on an OTC facility by the legal department of the Central Bank. Through various activist action on our*





*side, and the triggered Amendment Act to the SARB Act in 2010 with a further creeping expropriation, the real value can actually be realised sooner.*

*What is the value or the prospective value?*

*For ease of reference we attach a comparison and appraisal of the only privately owned Central Banks in the world, our 5% shareholding in SARB being valued between Euro 5 and 200 million.*

*..."*

- 131 Throughout the period that the third respondent has sought to sell his and his associates' shares in the Reserve Bank, he has done so at prices well above their market value. This is most evidenced from annexure "FA35" which is a summary of the prices at which the third respondent has sought to sell his shares in the Reserve Bank during the period September 2007 to April 2014.
- 132 Annexure "FA36" represents the volume and price at which shares in the Reserve Bank were in fact traded on the Reserve Bank's OTCSTF during the corresponding period. A comparison between the actual traded share price and the price for which the third respondent offered his and his associates shares shows the following -
- 132.1 during September 2007 to December 2007 (the first period set out in annexure "FA35"), the third respondent sought unsuccessfully to sell his shares on the Reserve Bank's OTCSTF for a price of between

R2,140 and R2,380. During the same period, the highest level that the average price per share rose to was R3.42;

132.2 in March 2011, the average price per share on the OTCSTF was R12.26. That same month, the third respondent sought unsuccessfully to sell his shares for a price of between R4,701 and R4,730; and

132.3 in April of this year, the third respondent sought unsuccessfully to sell his shares at a price of between R7,901 and R7,911 despite the fact that the average price per share reported by the OTCSTF had in fact fallen to R3.68.

133 In order to address the Reserve Bank's growing concerns about the accumulation of shares by associated groups of shareholders and the effects of ever-increasing shareholder activism, the Reserve Bank requested National Treasury to amend the Act in 2010.

#### F. THE AMENDMENT ACT

134 Given the demonstrated ease with which the 10,000 share limit could be circumvented by shareholders who were so inclined, the Amendment Act sought, *inter alia*, to reinforce certain limitations on the number of shares in the Reserve Bank that may be held by the "associates" of a shareholder.

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- 135 It was through those amendments that the restrictions placed on shareholding in section 22 of the Act were introduced to prohibit shareholders from holding, in aggregate with their associates, in excess of 10,000 Reserve Bank shares.
- 136 The mechanism provided to the Reserve Bank of approaching a court for an order disposing of the shares was also introduced with that suite of amendments.
- 137 As I set out above, section 22(2) of the Act placed an obligation on any shareholder who held, or held in aggregate with his associates, more than 10,000 shares at time of the commencement of the Amendment Act, to disclose in a manner as may be prescribed to the Reserve Bank, the names of all his associates, as well as the number of shares held by each of them.
- 138 Section 22(2A) of the Act provides that a shareholder who discloses information as contemplated in subsection (2) may continue to hold, or hold in aggregate with his associates, those shares provided that for as long as such shareholding, or aggregate shareholding, as the case may be, exceeds 10 000 shares, neither the shareholder nor his associates shall acquire any further shares in the Bank.
- 139 Subsequent to the Amendment Act being passed into law, and prior to the promulgation of the Regulations to which I refer below, the Reserve Bank issued a Notice to Shareholders dated 21 September 2010. A copy of this notice is attached marked "FA37".

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140 In this notice, the Reserve Bank's shareholders who had been identified as having "associates" were requested, in terms of section 22(2) of the Act, to make disclosure of their associates on or before 23 October 2010.

141 None of the respondents made the necessary disclosure.

142 On 13 October 2010, the Minister of Finance promulgated Regulations in terms of section 36 of the Act. Regulation 3 deals with the disclosure obligation created under section 22(2) of the Act and provides as follows –


*"3.1 A shareholder required in terms of section 22(2) of the Act to make disclosure of associates, shall lodge the required information –*

*(a) within 40 days of the date on which these Regulations are promulgated, or*

*(b) if the obligation to disclose arises in respect of any event that takes place after the date of promulgation mentioned in (a), within 40 days of the date of such event.*

*3.2 Any prospective buyer of shares shall be required to disclose his, her or its associates on application to purchase shares in the manner as may be required by the Bank.*

*3.3 Information in terms of Regulation 3.1 must be lodged in the format of the Schedule at the end of these Regulations."*

- 143 The effect of these provisions is that only those shareholders who disclosed the information as contemplated in subsection 22(2), as read with the relevant Regulations, are entitled, in terms of section 22(2A), to continue to hold, or hold in aggregate with his associates, those shares in excess of 10,000 provided that for so long as the shareholding or aggregate shareholding exceeds 10,000 shares, neither the shareholder nor his associates are permitted to acquire any further shares in the Reserve Bank.
- 144 Because the Regulations prescribed that such disclosure had to be made *within forty days of 13 October 2010*, it was only if shareholders took advantage of this opportunity to regularise their shareholding, that they could continue to hold shares in excess of 10,000. Any person who did not make the disclosure "as prescribed" under the Regulation, is not entitled to continue to hold his shares in excess of 10,000.
- 145 None of the respondents in this matter made the requisite disclosure in terms of regulation 3. As a result, their continued holding of more than 10,000 shares is unlawful and the Bank may proceed to approach a court in terms of section 22(1)(b) for an order requiring the disposal of the shares held in excess of 10,000.
- 146 The shares which are sold pursuant to an order of court would have to be purchased through the OTCSTF by private parties. They cannot be repurchased by the Reserve Bank itself given the provisions of section 13 of the Act.
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**G. NATURE OF THE RELIEF SOUGHT**

147 Section 22(1)(b) of the act entitles the Reserve Bank to approach a court for *"an appropriate order to redress the matter, which order may include, but is not limited to, an order for the disposal of shares in the Bank at a price per share and subject to such terms, conditions and restrictions as the court may determine"*.

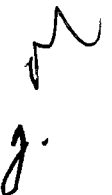
148 In keeping with this statutory provision, the Reserve Bank seeks an order directing the respondents (and their associates) to dispose of the Reserve Bank shares they hold in aggregate above 10,000.

149 Section 22(1)(b) requires the order for the disposal of shares to stipulate a price at which the shares are to be sold. In order to ensure that this requirement is met and the respondents have the best possible opportunity to obtain a market related price for their shares, the order also anticipates that the shares will be sold over a period of two years and stipulates that the sale price of the shares may not be less than the fair value of the shares as at 31 July 2014 as determined by an expert appointed by the Reserve Bank to value the shares. I shall address that expert analysis in more detail below.

150 In addition, in order to facilitate the smooth management of the sale of the respondents' shares, the order includes the appointment of an independent broker to manage the disposal of the shares over two years.

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- 151 The broker may determine that it is appropriate to sell the shares in tranches to avoid a dilution of the price per share if all of the shares are sold at once. The broker will furthermore be precluded from selling the shares at a price less than the fair value of the shares as at 31 July 2014, as determined by the expert appointed by the Bank. Should buyers in the market be willing to purchase the shares from the broker at a higher price than that which has been determined by the expert, nothing set out in the relief sought herein would preclude the broker from selling the shares at that higher price.
- 152 Prior to launching this application, the Bank appointed Investec Securities Proprietary Limited ("Investec") as an independent broker.
- 153 Ms Jacquie Howard, on behalf of Investec, has provided a supporting affidavit, attached hereto marked "FA38", confirming that Investec would accept an appointment to act as the independent broker pursuant to any order granted by this court in the application. In terms of this mandate, Investec will facilitate the sale of the relevant Reserve Bank shares at a price of not less than the fair value of the shares as at 31 July 2014.
- 154 In preparing this application, the Reserve Bank also appointed KPMG to conduct an analysis of the fair value of the Reserve Bank shares as at 31 July 2014. A copy of that report is attached hereto marked "FA39". Attached to the report is a confirmatory affidavit from Neeraj Shah, who authored the





report, in which he confirms the correctness of its contents and in which he qualifies himself as an expert to express the opinions contained in the report.

155 It is clear from the above report that the fair value of the shares as at 31 July 2014 is R1,55. The order sought in this application therefore provides that the shares sold pursuant to the order may not be sold at a value less than R1,55. As set out above, should potential buyers in the market be willing, the order sought herein does not preclude the broker from selling the shares at a price higher than R1,55.

#### H. CONCLUSION

156 The Reserve Bank has brought this application in order to deal with the continued unlawful holding of Reserve Bank shares by a number of its shareholders. The rise in shareholder activism over the past number of years poses a real threat to the fulfilment of the Reserve Bank's constitutional mandate to remain independent and to protect the value of the currency, in the interest of balanced and sustainable economic growth in South Africa.

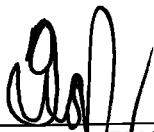
157 The respondents have failed to comply with their obligations as private shareholders under the Act. They have done so notwithstanding the time period that was provided to each of the respondents after the Amendment Act took effect in 2010 to disclose their associated shareholding in excess of 10,000 shares and notwithstanding the opportunity given to them to avoid being cited in this application.





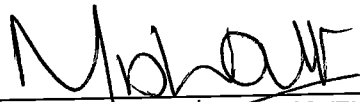
158 In the circumstances, the Reserve Bank is duty-bound to bring this application to enforce the provisions of the Act.

WHEREFORE, the Reserve Bank prays for an order in terms of the attached Notice of Motion, together with the costs of three counsel where three counsel have been employed.



JOHANNES JURGENS DE JAGER

I certify that this affidavit was signed and sworn to before me at Sandton on this the 29 day of October 2014 by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'



COMMISSIONER OF OATHS

Name:

Address:

MAGDALENA FRANCINA MARGARETHA VAN DER WALT  
Commissioner of Oaths by Appointment  
Reference Number: 1/9/4 10.06.2010  
155 5th Street  
Sandton

Capacity

11. Wohnort/Residence/Domicile  
**GRÜNWALD**


11. Wohnort/Residence/Domicile

11. Wohnort/Residence/Domicile

12. Größe/Height/Taille  
**194 cm**

13. Augenfarbe/Colour of eyes/Couleur des yeux  
**GRAUGRÜN**

14. Ordens- oder Künstlernamen/  
Religious name or pseudonym/Nom de religion ou pseudonyme



1. Type  
**D**

2. Code/Coinc. Code  
**D**

3. Name/Surname/Nom  
**DÜRR**

4. Geburtsort/Date of birth/Date de naissance  
**MÜNCHEN**

5. Geschlecht/Sex/Sexe  
**M**

6. Geburtsdatum/Date of birth/Date de naissance  
**27.11.1998**

7. Ausstellungsdatum/Date of issue/Date de délivrance  
**27.11.1998**

8. Gültigkeit bis/Date of expiry/Date d'expiration  
**26.11.2008**

9. Behörde/Autorität/Authorité  
**GEMEINSCHAFT GRÜNWALD**

10. Unterschrift des Führeibaren/Holder's signature/Signature du titulaire  
*Michael Duerr*

11. Passort-Nr./Passport No./Passport N°  
**8263092932**

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*Michael Duerr*

*Michael Duerr*

*J. M.*

REF. 0100 29

GEREGISTREERDE WOON- EN POSADRES

1. Bewaar die bewys van u GEREGISTREERDE WOON- EN POSADRES in hierdie sakkie.
2. Indien u van adres verander het, of indien besonderhede van u huidige adres, die straatnaam en/of -nommer, ens. verander het, moet die vorm **KENNISGEWING VAN ADRESVERANDERING**, wat in die sakkie agter in die Identiteitsdokument is, gebruik word om die verandering aan te meld en moet dit ingedien word by of gepos word aan die naaste streeklidstreekkantoor van die DEPARTEMENT VAN BINNELANDSE SAKE.

REGISTERED RESIDENTIAL AND POSTAL ADDRESS

1. Keep the proof of your REGISTERED RESIDENTIAL AND POSTAL ADDRESS in this pocket.
2. If you have changed your address, or, if particulars of your present address, e.g. name of street and/or street number, etc., have been changed, the **NOTICE OF CHANGE OF ADDRESS** form in the pocket at the back of the Identity document must be used to report the change and it must be handed in at or posted to the nearest regional/district office of the DEPARTMENT OF HOME AFFAIRS.

1

I.D.No. 660403 0044 08 8



S. A. BURGER/S. A. CITIZEN

VAN/SURNAME

DUERR



VOORNAME/FORENAMES

SOPHIA MARY

GEBORTEDISTRIK OF LAND/  
DISTRICT OR COUNTRY OF BIRTH

SOUTH AFRICA

GEBORTEDATUM/  
DATE OF BIRTH

1966-04-03

DATUM UITGEREIK  
DATE ISSUED

2003-08-01



UITGEREIK OP BESAG VAN DIE  
DIREKTEUR-GENERAAL:  
BINNELANDSE SAKE

ISSUED BY AUTHORITY OF THE  
DIRECTOR-GENERAL:  
HOME AFFAIRS

29



"FAI.3"

EB-1123 *[Signature]* 1119101-11 187  
Datum/Date Handtekening/Signature Hand/Frank

1119101-11

15. Kinder/Children/Enfants

Name(n) und Vornamen(2) Surname and given names Nom et prénoms	Geburtsdag / Date of birth Date de naissance	Geslacht / Sex Sexe
DÜRR CAROLIN-----	06. 11. 1990	F
DÜRR FREDERIC-----	07. 11. 1994	M

GRÜNWALD, 27. NOVEMBER 1998  
GEMEINDE GRÜNWALD

I. A.

*[Signature]*



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GRÜNWALD  
Datum/Date/Date

27. NOVEMBER 1998

I. A.

*[Signature]*

Unterschrift / Signature / Signature



DUERR FM

*[Handwritten marks]*

"FA1.4"

08-11-23 / [Signature] Lt. / Rang/Rank

15. Kinder/Children/Enfants

Name(n) und Vornamen(n)  
Surname and given names

Geburtsort /  
Date of birth  
Date de naissance

DURR CAROLIN

06.11.1990 F

DURR FREDERIC

07.11.1994 M

GRÜNWALD, 27. NOVEMBER 1998

GEMEINDE GRÜNWALD

L. A.

[Signature]



Amthaus Vermerk  
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Für alle Länder / For all countries / Pour tous pays  
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Datum / Date / Date

27. NOVEMBER 1998



L. A.

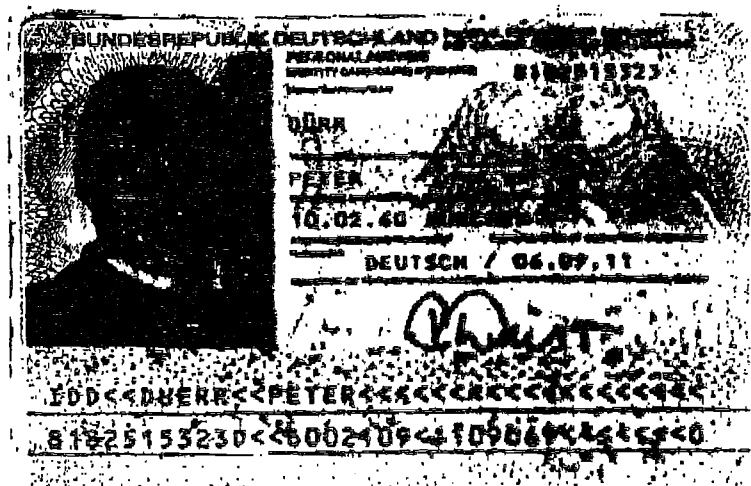
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DURR CAROLIN

J. M.

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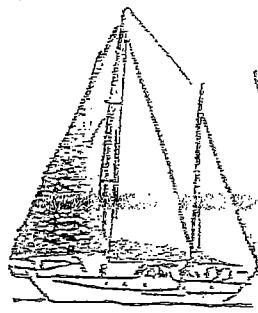
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J. M









LEGAL SERVICES	
DOC No:	2006-99
18 DEC 2006	
NAME	J. de Jager
REPLY	2007-01-15
FILE	016673

76  
"FA2"

**YACHT FREE SPIRIT**

Michael & Sophie Dürr

info@mduerr.com

P.O Box 1290

Gans Bay 7220

Pearly Beach, 11.12.2006

Dear Mr. de Jager

I would like to assist you as the General Counsel of the SARB to clarify your addressed matters (letter dated 27.11.2006).

Thank you very much for your elaborate explanation of some details. Regarding your enquiries on page three and four of your letter:

ad 1) I live with my family on the mentioned property. From the already forwarded certified passports and IDs you may have worked out that M is me, SM is my wife, JJ is our daughter, FM is my son and CC is my daughter. EA is my father, EL is my mother, P and WM are my brothers. The latter ones are non resident and you may mark the share certificates accordingly. Everybody is beneficial holder.

ad 2) CC Brouckaert is my wife's mother and my wife is handling her investments.

ad 3) The purchase of 100 shares has been correctly signed by her mother SM.

ad 4) See also ad 1). I signed on behalf of my children (under age). I hereby state that I have the legal capacity to sign for these financial matters on behalf of all the persons listed except my wife and mother-in-law. If you need a document for the power of attorney for my parents and my brothers, please furnish us with the official document as there is nothing available online.

Hopefully the above is to your satisfaction and has resolved the matter. I have to add that I highly recommend the SARB shares and therefore have some following.

Yours sincerely

Michael Dürr

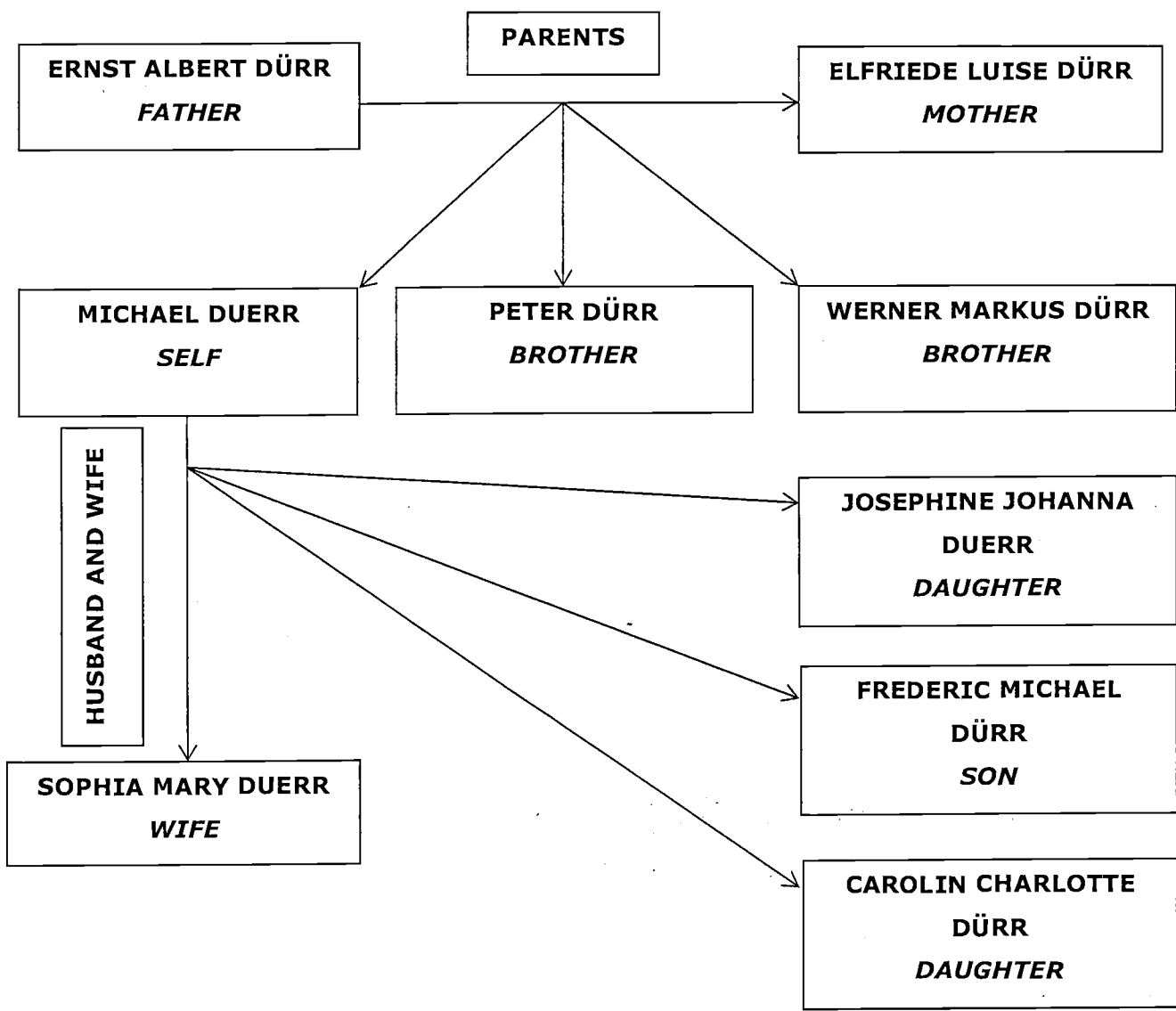
Emerging Shareholder



M  
J.

77  
"FA3"

FAMILY TREE



M  
J.

78  
"FA4"

**RULES**

relating to the

**OVER-THE-COUNTER SHARE TRANSFER FACILITY**

in respect of Shares of the

**SOUTH AFRICAN RESERVE BANK**

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# RULES

relating to the

## OVER-THE-COUNTER SHARE TRANSFER FACILITY

in respect of Shares of the

### SOUTH AFRICAN RESERVE BANK

#### 1 INTERPRETATION

1.1 In these Rules:

1.2 Clause headings are for convenience and shall not be used in their interpretation.

1.3 Unless the context clearly indicates a contrary intention -

1.3.1 an expression which denotes -

1.3.1.1 any gender includes the other genders;

1.3.1.2 a natural person includes an artificial person and vice versa; and

1.3.1.3 the singular includes the plural and vice versa.

1.3.2 The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings -

1.3.2.1 "Bank" - The South African Reserve Bank (Incorporated in the Republic in terms of The South African Reserve Bank Act, 1989 - Act No. 90 of 1989);

1.3.2.2 "Board" - the Board of Directors of the Bank, from time to time;

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- 1.3.2.3 "Broker's Transfer Form" - a CM41 form, a copy of which is hereby attached as annexure A;
- 1.3.2.4 "Business Day" - any day other than a Saturday, a Sunday or official public holiday in terms of the laws of the Republic;
- 1.3.2.5 "Buy Form" - the form to be completed and submitted by a Buyer by hand or by means of post, facsimile or e-mail offering to purchase Shares from a Seller in terms of these Rules in connection with a Buy Offer (a copy of which is hereby attached as annexure B): Provided that the original Buy Form be submitted to the Transfer Manager prior to or on Settlement Date;
- 1.3.2.6 "Buy Invoice" - the document completed by the Transfer Manager and submitted to the Buyer pursuant to a Buy Offer;
- 1.3.2.7 "Buyer" - any person who makes a Buy Offer by means of a Buy Form in terms of these Rules;
- 1.3.2.8 "Buy Offer" - an Offer by means of a Buy Form submitted by a Buyer to the Transfer Manager at the Office of the Transfer Manager;
- 1.3.2.9 "Buy Offer Register" - the official register held by the Transfer Manager for purposes of recording the Receipt Sequence of Buy Offers;
- 1.3.2.10 "Closing Time" - 15:00 on any Business Day;
- 1.3.2.11 "General Counsel" - the General Counsel of the Bank;
- 1.3.2.12 "Initial Receipt" - The date and time of the receipt, at the Transfer Manager's office, of a successful Validated Buy or Sell Offer.
- 1.3.2.13 "Live Trading" - the Live Trading contemplated in these Rules;
- 1.3.2.14 "Match" - a successful match between a Sell Offer and a Buy Offer for Shares in terms of these Rules;
- 1.3.2.15 "Offer" - a Sell Offer or Buy Offer, as the case may be, by utilising the OTCSTF as contemplated in terms of these Rules;
- 1.3.2.16 "Offeror" - either the Seller or the Buyer as the case may be;
- 1.3.2.17 "Offer Period" - the period for which an Offer remains valid, which period is calculated from the date and time of initial receipt of a specific Offer until 15:00 on the first Business Day after the expiration of a period of three calendar months, whereafter the Offer shall automatically lapse;
- 1.3.2.18 "OTCSTF" - the over-the-counter share transfer facility contemplated in these Rules;

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- 1.3.2.19 "OTCSTF Office" - the office of the Transfer Manager which OTCSTF Office shall constitute the postal or delivery address for all documents in terms of these Rules;
- 1.3.2.20 "Purchase Price" - the purchase price payable by a Buyer to a Seller in respect of a Sale as reflected in the relevant Buy Invoice as envisaged in these Rules;
- 1.3.2.21 "Receipt Sequence" - is the sequence in which Buy and Sell Offers are received at the Transfer Manager's Office and recorded in the Buy Offer and Sell Offer Registers taking into account the Initial Receipt thereof ("first-come, first-validated and first-matched" basis);
- 1.3.2.22 "Regulations" - the Regulations promulgated in terms of Section 36 of the SARB Act;
- 1.3.2.23 "Republic" - The Republic of South Africa;
- 1.3.2.24 "Rules" - these Rules, as determined by the Board from time to time;
- 1.3.2.25 "Sale" - the sale of Shares resulting from a Match in terms of these Rules;
- 1.3.2.26 "Sale Closing Documents" - means collectively, the original of the following -
  - 1.3.2.26.1 the Seller's share certificate in respect of the Shares that are the subject of the Sale;
  - 1.3.2.26.2 a Securities Transfer Form duly signed and dated but left blank as to the transferee;
  - 1.3.2.26.3 the Buy Form and Sell Form;
  - 1.3.2.26.4 all Statutory Information;
- 1.3.2.27 "SARB Act" - The South African Reserve Bank Act, 1989 (Act No. 90 of 1989);
- 1.3.2.28 "Securities Transfer Form" - a CM42 form, a copy of which is hereby attached as annexure C;
- 1.3.2.29 "Seller" - any person who makes a Sell Offer by means of a Sell Form in terms of these Rules;
- 1.3.2.30 "Sell Form" - the form to be completed and submitted by a Seller by hand or by means of post, facsimile or e-mail offering to sell Shares to a Buyer in terms of these Rules in connection with a Sell Offer (a copy of

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which is hereby attached as annexure D): Provided that the original Sell Form be submitted to the Transfer Manager prior to or on Settlement Date;

- 1.3.2.31 "Sell Invoice" - the invoice completed by the Transfer Manager and sent to the Seller pursuant to a Sell Offer;
- 1.3.2.32 "Sell Offer" - an Offer by means of a Sell Form submitted by a Seller to the Transfer Manager, at the Office of the Transfer Manager;
- 1.3.2.33 "Sell Offer Register" - the official register held by the Transfer Manager for purposes of recording the Receipt Sequence of Sell Offers;
- 1.3.2.34 "Settlement Date" - 15:00 on the 15<sup>th</sup> (fifteenth) Business Day following the date of Matching as recorded in the Transaction Register;
- 1.3.2.35 "Shares" - ordinary Shares in the Bank as contemplated in the SARB Act;
- 1.3.2.36 "Shareholder" - a shareholder of the Bank as defined in Section 1 of the SARB Act;
- 1.3.2.37 "Statutory Information" - means all information required by the Act and the Regulations, and includes in relation to a Buyer and a Seller of shares -
  - 1.3.2.37.1 in the case of a natural person, a valid South African identity document or any other official identification document as recognised by the Transfer Secretary;
  - 1.3.2.37.2 in the case of a company, a registration certificate and the memorandum of incorporation;
  - 1.3.2.37.3 in the case of a close corporation, a founding statement or amended founding statement;
  - 1.3.2.37.4 in the case of a trust, the trust deed and Masters' Letters of Authority; or
  - 1.3.2.37.5 any additional information in respect of the Buyer or Seller, whether a legal or natural person, that the Transfer Secretary may in his or her discretion require;
- 1.3.2.38 "Trading Hours" - the hours between 08:00 - 15:00 inclusive on any Business Day;
- 1.3.2.39 "Transferee" - a person who acquires Shares;

- 1.3.2.40 "Transferor" - a person who disposes of Shares;
- 1.3.2.41 "Transfer Manager" - the Transfer Manager appointed to manage the operation of the OTCSTF; and
- 1.3.2.42 "Transfer Secretary" - the Transfer Secretary appointed to attend to the administrative functions of the OTCSTF;
- 1.3.2.43 "Transaction Register" - the official register held by the Transfer Manager for purposes of recording the particulars of a successfully matched Sell Offer and Buy Offer;
- 1.3.2.44 "Validation" - The process of verifying the correctness of the information contained in the Buy or Sell Offer and ensuring the completeness and validity thereof strictly in accordance with the requirements of the SARB Act, the Regulations and the Rules after the Initial Receipt of any such Buy or Sell Offer by the Transfer Manger.
- 1.4 Should any provision in a definition be a substantive provision conferring rights or imposing obligations on any party or shareholder, then effect shall be given to such provision as if it were a substantive provision in the body of these Rules.
- 1.5 Any reference to an enactment, regulation or by-law is to that enactment, regulation or by-law as at the issue date of these Rules, and as amended or re-amended from time to time.
- 1.6 When any number of days is prescribed, such number shall exclude the first and include the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding Business Day.
- 1.7 Any schedule or annexure to these Rules shall, save where the context indicates otherwise, form part of these Rules.
- 1.8 Where any term is defined within a particular clause, other than the interpretation clause, the term shall bear the meaning ascribed to it in that clause wherever it is used in these Rules.

- 1.9 The use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s.
- 1.10 If any conflict exists between these Rules and the terms of the SARB Act and the Regulations, then the SARB Act and the Regulations shall prevail.
- 1.11 The expiration or termination of these Rules shall not affect such of the provisions of these Rules as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

## 2 INTRODUCTION

- 2.1 The integral function of the OTCSTF is to provide a facility for trading in Shares.
- 2.2 These Rules set out the manner, terms and conditions upon which transactions shall be concluded in the utilisation of the OTCSTF.
- 2.3 Shareholders may negotiate and enter into transactions with regard to their Shares with third parties outside of the OTCSTF: Provided that any such transaction shall be of no force and effect unless the transaction has been duly registered by the Transfer Secretary in terms of the SARB Act and the Regulations.

3 **OVER-THE-COUNTER SHARE TRANSFER FACILITY TRANSACTIONS**

3.1 **Live Trading**

3.1.1 The OTCSTF shall operate as a Live Trading facility.

3.1.2 The OTCSTF shall operate in accordance with the provisions of these Rules.

3.2 **Sell Offer**

3.2.1 Any Seller shall, by no later than 15:00 on any Business Day, furnish a duly completed Sell Form to the Transfer Manager at the address as envisaged in paragraph 19.1.1, which Sell Form shall, *inter alia*, specify -

3.2.1.1 that the Seller wishes to sell a specified number of Shares; and

3.2.1.2 the minimum Purchase Price which the Seller is willing to accept per Share expressed in the monetary unit of the Republic as envisaged in section 15 of the SARB Act.

3.2.2 a Seller must submit only one Sell Form in respect of each Sell Offer which will be matched in Receipt Sequence unless withdrawn by the Seller in writing.

3.2.3 On receipt of a successful Validated Sell Form by the Transfer Manager, the particulars of the Initial Receipt shall be recorded in the Sell Offer Register.

3.2.4 The date, time and particulars of a Sell Offer as recorded in the Sell Offer Register shall for purposes of the determination of the Receipt Sequence of the Sell Offer and for any other purposes pertaining to the

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Rules be regarded as correct and as the actual date and time of Initial Receipt of the Sell Offer by the Transfer Manager.

3.2.5 Any prospective Seller who submitted a successful Validated Sell Offer to the Transfer Manager's office will be notified in writing by the Transfer Manager of the receipt of such offer to sell. Such acknowledgement of receipt of the Sell Offer by the Bank will also serve as an advice that such Sell Offer is in full force for the Offer Period.

### 3.3 Buy Offer

3.3.1 Any Buyer shall, by not later than 15:00 on any Business Day, furnish a duly completed Buy Form to the Transfer Manager, at the address as envisaged in paragraph 19.1.1, which Buy Form, *inter alia*, shall -

3.3.1.1 include certified copies of the Statutory Information of the Buyer;

3.3.1.2 include, where applicable, certified copies of any relevant documentation to give effect to and/or rectify the Sale;

3.3.1.3 state that the Buyer wishes to purchase a specified number of Shares; and

3.3.1.4 state the Purchase Price which the Buyer is willing to pay per Share expressed in the monetary unit of the Republic as envisaged in section 15 of the SARB Act.

3.3.2 a Buyer must submit only one Buy Form in respect of each Buy Offer which will be matched in Receipt Sequence unless withdrawn by the Buyer in writing.

3.3.3 On receipt of a successful Validated Buy Form by the Transfer Manager, details pertaining to the Initial Receipt shall be recorded in the Buy Offer Register.

3.3.4 The date, time and particulars of a Buy Offer as recorded in the Buy Offer Register shall for purposes of the determination of the Receipt Sequence of the Buy Offer and for any other purposes pertaining to the

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Rules be regarded as correct and as the actual date and time of Initial Receipt of the Buy Offer by the Transfer Manager.

- 3.3.5 Any prospective Buyer who submitted a successful Validated Buy Offer to the Transfer Manager's office will be notified in writing by the Transfer Manager of the receipt of such offer to buy. Such acknowledgement of receipt of the Buy Offer by the Bank will also serve as an advice that such Buy Offer is in full force for the Offer Period.

#### 4 MATCHING OF OFFERS

##### 4.1 Allocation

4.1.1 Offers received by the Transfer Manager shall be for purposes of -

4.1.1.1 ascertaining whether the Offers are based on complete, correct and reliable information;

4.1.1.2 determining whether the Offers are in compliance with the SARB Act, the Regulations, and the Rules; and

4.1.1.3 matching corresponding Buy Offers with Sell Offers.

4.1.2 Subject to and in accordance with paragraph 4.1.1 above, the Transfer Manager shall Match a Sell Offer with a Buy Offer, after taking into account the Receipt Sequence of the particular Sell Offer and Buy Offer, in accordance with the respective requirements of the Offerors.

4.1.3 Matching of Buy Offers and Sell Offers by the Transfer Manager will be done continuously during Trading Hours upon the receipt of Buy and Sell Offers from the Offerors.

4.1.4 The Transfer Manager shall Match a Buy Offer with a Sell Offer as near as may be practicable to their respective Receipt Sequence on a "first-come, first-validated and first-matched" basis, and subject thereto, the Transfer Manager shall, in his or her discretion, determine the most appropriate Match: Provided that for purposes of Matching, the Receipt

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Sequence of the respective Buy and Sell Offer shall be conclusive.

4.1.5 In the event of the Transfer Manager having received a Buy Offer quoted at a higher price as well as a Sell Offer quoted at a lower price, the Matching and therefore the Sale will take place at the lower price.

4.1.6 The Transfer Manager shall in his or her own absolute discretion endeavour to Match all Offers, subject to -

4.1.6.1 any restrictions pertaining to the price and availability of shares;

4.1.6.2 any legal restrictions; and

4.1.6.3 the Receipt Sequence.

#### 4.2 **Partial Allocation**

4.2.1 If a Seller has offered to sell more than the number of Shares which a Buyer has agreed to buy or which the Buyer, in law is entitled to buy ("Excess Shares"), such Excess Shares shall for the remainder of the Offer Period remain available for Sale, and failing such Sale, the Excess Shares shall be returned to the Seller.

4.2.2 Should no Buy Offer be outstanding, then the balance of the Shares in the Sell Offer shall be treated as a standing Offer as envisaged in terms of these Rules until such Offer is retracted by the Seller or otherwise such Offer lapses automatically after expiration of the Offer Period.

4.2.3 Should a Buy Offer be Matched to a Sell Offer on terms relating to Purchase Price only, but not as to the quantity of the Shares required to be purchased by the Buyer or to be sold by the Seller, then the Transfer Manager shall be entitled to effect a Match for such part only, unless the Buyer or Seller expressly state otherwise in their Buy or Sell Form, as the case may be.

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4.3 **Recording**

Upon a successful Match, the relevant particulars of the Match shall be recorded in the Transaction Register and the Match shall be deemed to have been concluded in terms of the particulars reflected in such register.

4.4 **Confirmation**

4.4.1 Upon conclusion of the matching of Offers, the Transfer Manager shall on behalf of the Offerors, confirm a Match on the basis that -

4.4.1.1 the Seller shall accept his, her or its Sell Offer price, notwithstanding the existence of any higher Buy Offer price; and

4.4.1.2 the number of the Shares Matched and sold to the Buyer shall not exceed the number of Shares stipulated by the Buyer in the Buy Form.

4.4.2 Confirmation of a Match shall be communicated to the -

4.4.2.1 Seller, by the Transfer Manager providing the Seller with a Seller's Invoice; and

4.4.2.2 Buyer, by the Transfer Manager providing the Buyer with a Buyer's Invoice.

4.5 **Miscellaneous**

4.5.1 The Transfer Manager may accept or reject any Offer, in whole or in part if the provisions set out in the SARB Act, the Regulations and the Rules have not been complied with.

4.5.2 Should an Offer be rejected by the Transfer Manager for whatsoever reason, the Offeror shall be notified accordingly, whereafter a new Offer will have to be re-submitted by the Offeror in terms of these Rules.

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4.5.3 If an Offer has lapsed, and an Offeror wishes to renew it, the Offeror is required to submit a new Offer.

4.5.4 Any Offer received after Closing Time shall be treated as having been received on the following Business Day.

4.6 **Powers of Restitution**

4.6.1 In order to ensure compliance with the provisions of the SARB Act, the Regulations and/or these Rules, the Transfer Manager may in writing request any Buyer or Seller to provide the Transfer Manager with such information pertaining to a share transaction as he or she may require.

4.6.2 Should it be established that the provisions of the SARB Act, the Regulations and/or these Rules have been contravened, the Transfer Secretary shall, at any time after such Sale, be entitled to take such lawful action as he or she considers necessary to ensure compliance, including (but not limited to) the cancellation of the Sale or the disposal of the shares.

4.6.3 For purposes of enabling the Bank to give effect to the provisions of the SARB Act, the Regulations and/or these Rules, the Offeror who is in contravention of the said prescriptions, nominates, constitutes and appoints the General Counsel of the Bank as his, her or its attorney and agent and grants to the General Counsel full power and authority to do all acts and sign all such documents as may be necessary to implement any transactions concluded in pursuance of any remedies of the Bank arising from a breach of the provisions of the SARB Act, the Regulations and/or these Rules.

5 **SETTLEMENT**

5.1 A Buyer shall by no later than the Settlement Date, furnish the Transfer Manager with a Bank Cheque, Bankers Draft or confirmation of an electronic transfer in respect of the Purchase Price due in terms of the

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Sale as set out in the Buy Invoice, including any brokerage and stamp duty.

5.2 The Seller shall, by no later than the Settlement Date, deliver the Sale Closing Documents to the Transfer Manager. Such delivery shall be at the risk of the Seller.

5.3 Should -

5.3.1 payment of the Purchase Price and other amounts referred to in the Buy Invoice not be received; or

5.3.2 the Sale Closing Documents not be delivered by the Seller,

by the Settlement Date, the Transfer Manager shall, without prejudice to any rights or remedies of either the Buyer or the Seller be entitled to cancel the Transaction.

5.4 Upon receipt by the Transfer Manager of the Bank Cheque, Bankers Draft or confirmation of an electronic transfer, the net amount due in respect of the Sale to a Seller shall be paid to the Seller at the Seller's risk by way of a direct deposit into an account nominated by the Seller or in exceptional circumstances in such other manner agreed upon by the Seller and the Transfer Manager. Particulars of payment shall be reflected in the Sell Form.

5.5 Subject to timeous receipt of the Bank Cheque, Bankers Draft or confirmation of an electronic transfer, it is anticipated that settlement of the sale proceeds shall be dealt with and payment made to the Seller within 21 (twenty one) days of the Settlement Date. No representation or warranty is, however, made or given by the Bank or the Transfer Manager in this regard.

5.6 Provided that the Purchase Price has been paid by the Buyer, and the Sale Closing Documents have been delivered by the Seller to the

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Transfer Manager, any Sale shall be deemed to have been concluded on, and ownership shall be deemed to have vested in the Buyer, with effect from the Settlement Date, from which date all rights and entitlements shall accrue to and be for the benefit of the Buyer.

**6 AMENDMENTS TO THE SHARE REGISTER**

6.1 Provided that the Seller and the Buyer have complied with the Rules, the Purchase Price has been paid and the Bank has been furnished with the prescribed documentation, the Transfer Secretary shall -

- 6.1.1 amend the register of Shareholders;
- 6.1.2 prepare a share certificate in the name of the Buyer; and
- 6.1.3 deliver the relevant share certificate to the Buyer within 21 (twenty one) days of the Settlement Date. No representation or warranty is, however, made or given by the Bank or the Transfer Manager in this regard.

6.2 With effect from the amendment of the register of Shareholders, by the Transfer Secretary, as contemplated in the SARB Act, the Regulations and the Rules, the Buyer shall, subject to the legal impediments in the said legislation, become entitled to exercise all voting rights attached to the Shares which form the subject of the Sale and to receive all dividends in respect thereof.

**7 PROHIBITED ACTIVITIES**

7.1 Trading in options, warrants, futures or any other derivative instruments of any nature in relation to the Bank's Shares are prohibited.

7.2 Bear sales, short selling (namely, selling the Shares when the Seller does not have title to those Shares) and any associated scrip-lending activities are prohibited.

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8 REPRESENTATION

8.1 Buyers and/or Sellers are permitted to trade in Shares through a representative, provided that such representative is duly authorised to act as a representative and provides proof of such authority.

8.2 Proof shall be in a form acceptable to the Transfer Manager and shall include -

8.2.1 in the case of a company or close corporation, a duly certified resolution by the company or close corporation concerned, authorising the representative to trade in the Shares;

8.2.2 in the case of an individual representative, a duly certified copy of a power of attorney in favour of the representative, issued and executed by the Buyer or Seller concerned;

8.2.3 in the case of a trust, a duly certified resolution of the trustees of the trust authorising the representative to trade in the Shares;

8.2.4 in the case of a deceased estate, appropriate letters of executorship or any other similar authority issued by the Master of the High Court; and

8.2.5 such additional information as the Transfer Manager may require.

8.3 Any proof of authority provided in terms of paragraph 8.2 shall be deemed to be valid and binding on the Shareholder concerned unless prior written notification has been received by the Transfer Manager from such Buyer or Seller, prior to the Settlement Date, providing for the revocation and invalidation of the relevant proof of authority.

9 DIRECTORS AND EMPLOYEES OF THE BANK

Subject to the SARB Act, the Regulations and the Rules, trading Shares by the directors and employees of the Bank is permitted.

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**10 VOETSTOOTS**

10.1 Any Seller utilising the OTCSTF shall be deemed to have given the following warranties to the Bank, the Transfer Manager and the Buyer, namely that:

10.1.1 The Seller is the sole beneficial owner of the shares; and/or the Seller is lawfully entitled, willing and able to give free and unencumbered title to the Shares to any Buyer.

10.2 Save as contemplated in paragraph 10.1, the Seller gives no other warranties or representations of any nature whatsoever, whether express, tacit or implied by law, in relation to the Shares and/or the Bank. The Shares are accordingly sold "voetstoots".

10.3 Any Shareholder trading in Shares, does so after having due consideration to the current circumstances of the Bank, in full knowledge, understanding and acceptance of the SARB Act, the Regulations and the Rules and will have no recourse as against the Bank, its directors, or officers, or the Transfer Manager for the Shares so traded. Accordingly, all the risks in utilising the OTCSTF and/or reliance on any information not formally and officially issued and approved by the Board, shall be borne by the Buyer or Seller concerned.

**11 BROKERAGE, ADMINISTRATION AND COSTS**

11.1 Unless otherwise determined by the Board, no brokerage shall be levied in respect of any Sale.

11.2 All payments in respect of Sales shall be made without set off, bank charges or deductions. Upon settlement of the transaction, the Transfer Manager shall pay to the Seller the net proceeds due to the Seller.

- 11.3 The Buyer shall, in addition to the purchase consideration payable to the Transfer Manager, be liable for payment of any stamp duty, marketable securities tax, Value Added Tax or any other taxes which may be levied and payable on a Sale from time to time.

## 12 ADMINISTRATION

- 12.1 The Transfer Manager shall cause a duly updated Sell Offer Register, Buy Offer Register and Transaction Register to be kept and maintained.

- 12.2 The Transfer Secretary shall attend to the –

12.2.1 administration of the Share Register;

12.2.2 recovery of all taxes, duties and levies payable in respect of the transfer of Shares; and

12.2.3 processing of share certificates and Securities Transfer Forms and, if necessary, Broker's Transfer Forms.

- 12.3 The Transfer Manager shall attend to the settlement of payment received from the Buyer to the Seller.

- 12.4 The share register shall on a regular basis be updated to account for all transactions.

- 12.5 Share certificates in respect of any transactions shall be sent by the Transfer Secretary to the -

12.5.1 Buyer; and

12.5.2 Seller in respect of any Shares returned to him or her (in the event of a Sale of part of the Seller's Shares),

within 21 (twenty one) days of the Settlement Date. No representation or warranty is, however, made or given by the Bank or the Transfer Manager in this regard.

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**13 WORN-OUT, ILLEGIBLE AND LOST SHARE CERTIFICATES**

13.1 Notwithstanding anything to the contrary contained in these Rules, if a Shareholder's Share certificate/s is/are worn-out, illegible or lost, such Shareholder shall not be entitled to make a Sell Offer by means of the OTCSTF until and unless the Shareholder has complied with the SARB Act, the Regulations, and the Rules.

**14 EXCLUSION OF LIABILITY AND INDEMNITIES**

14.1 Without prejudice to any of the rights of the Bank and/or its agents, including the Transfer Manager and the Transfer Secretary ("indemnified parties") at law or in terms of any other provision of these Rules, any Seller or Buyer ("indemnifier") utilising the OTCSTF shall and does hereby indemnify the indemnified parties against and/or waives any rights or remedies against the indemnified parties, arising out of all actual or contingent losses, liabilities, damages, costs (including legal costs on the scale as between attorney and own client and any additional legal costs) and expenses of any nature whatsoever which the indemnified parties may suffer or incur as a result of or in connection with -

- 14.1.1 the failure by the indemnified parties, or any of them, to adhere to the provisions of the SARB Act, the Regulations and the Rules;
- 14.1.2 any breach of warranty, misrepresentation or non-disclosure of information by any Offeror;
- 14.1.3 the selection and Matching of Offers as between Buyer and Seller;
- 14.1.4 the Purchase Price achieved in respect of any Sale, subject only to compliance with any price stipulations by a Buyer or Seller;
- 14.1.5 any reliance by any Offeror on any false representations concerning the ownership in and to the Shares of the Bank;
- 14.1.6 any failure by a Buyer to pay the amounts due in respect of any Sale within the prescribed period or the failure of any Seller to deliver the relevant documents of title on the due date for delivery thereof;

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- 14.1.7 any action taken by any third party in respect of any payments made or transactions concluded pursuant to a Sale;
- 14.1.8 the cancellation by the Bank of any Sale or proposed Sale by reason of non-compliance with any provisions of the SARB Act, the Regulations and/or the Rules;
- 14.1.9 any claim arising from improper authorisation given to a representative of a Buyer or Seller;
- 14.1.10 a person purporting to be a representative of a Seller or a Buyer and not having the requisite authority to act;
- 14.1.11 any loss suffered arising out of the reliance by any Offeror of any price recommendations and/or valuations provided by any employee or director of the Bank;
- 14.1.12 any loss suffered by any Offeror arising out of his or her reliance on the validity of any tainted scrip and/or any other falsified documentation. In this regard, neither the Bank nor its agents shall be held responsible for damage arising from such falsified scrip or other documentation and shall, furthermore, not be obliged to verify the authenticity of any scrip or other documents received by it nor to verify the identity of the person dealing in such documentation;
- 14.1.13 the incorrect processing or Matching of Offers, save only in the event of fraud on the part of the Bank and/or the Transfer Manager;
- 14.1.14 non-approval by the Transfer Manager of any transfer of Shares;
- 14.1.15 any delays in the processing of transactions, delivery of documents or remittances of monies;
- 14.1.16 the suspension, cancellation and/or postponement by the Board of the OTCSTF.
  
- 14.2 The indemnifier shall be obliged to pay the indemnified parties the amount of any indemnified loss suffered or incurred by the indemnified parties as soon as the indemnified parties are obliged to pay the amount thereof (in the case of any indemnified loss which involves a payment by the indemnified parties) or as soon as the indemnified parties suffer the indemnified loss (in the case of an indemnified loss which does not involve a payment by the indemnified parties).

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**15 DISCIPLINARY PROCEDURES**

15.1 The Board shall be entitled from time to time to implement any disciplinary procedures it considers appropriate in order to regulate compliance with the SARB Act, the Regulations and the Rules.

**16 DISPUTE RESOLUTION**

16.1 Any dispute or disagreement between -

16.1.1 a Seller and a Buyer; or

16.1.2 an Offeror and the Transfer Manager,

16.2 shall be referred for mediation to the General Counsel of the Bank, at the request of the Seller, Buyer or Transfer Manager, as the case may be.

16.3 Notification of the dispute shall be given in writing and shall be served on the Transfer Manager at the registered office of the Bank and the OTCSTF Office.

16.4 The General Counsel, or his/her nominee, shall endeavour to mediate and resolve any such dispute or difference as soon as reasonably practicable and in any event, within 30 (thirty) days of receipt of the notice referred to in paragraph 16.3.

16.5 Failing timeous resolution by the General Counsel of such a dispute for any reason whatsoever, the aggrieved party shall be entitled to refer such dispute to arbitration in terms of paragraph 17.

**17 ARBITRATION**

17.1 Subject to paragraph 16, should any dispute or difference arise between the parties relating to or arising out of the SARB Act, the Regulations and the Rules, including the implementation, execution,

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interpretation, rectification, any intended termination or cancellation thereof, the dispute or difference will be referred for arbitration to the Arbitration Foundation of Southern Africa ("AFSA") in terms of AFSA's arbitration rules.

17.2 The decision of the arbitrator in the arbitration proceedings -

17.2.1 shall be final and binding on the parties to the proceedings;

17.2.2 will be given effect to; and

17.2.3 may be made an order of any court to whose jurisdiction the parties are subject.

17.3 Notwithstanding the foregoing, nothing in this paragraph shall be construed as precluding any party from applying to court for a temporary interdict or other relief, pending the decision of the award of the arbitrator in terms of this paragraph.

17.4 This paragraph is severable from the rest of the SARB Act, the Regulations and the Rules and shall, notwithstanding the termination of the same, remain in full force and effect.

## 18 APPLICABLE LAW

18.1 The Rules (including their validity, existence and implementation, the interpretation and application of their provisions, the respective rights and obligations of the parties in terms of and arising out of the provisions), shall be interpreted and governed in all respects by the laws of the Republic.

## 19 DOMICILIUM AND NOTICES

19.1 The Bank, the Transfer Manager and the Transfer Secretary choose as their *domicilia citandi et executandi* ("domicilium") for all purposes relating to these Rules, including the giving of any notice, the payment of any sum, the serving of any process, as follows -

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19.1.1 Transfer Manager's office -

19.1.1.1 Physical: The South African Reserve Bank  
370 Church Street  
Pretoria  
0002  
Republic of South Africa;

19.1.1.2 Postal: P O Box 427  
Pretoria  
0001  
Republic of South Africa;

19.1.1.3 Telefacsimile: (012) 313 4090; and

19.1.1.4 E-Mail: OTCSTF@resbank.co.za.  
(Marked for the Attention - Transfer Manager: Legal Services Department)

19.1.2 Bank Secretary's office -

19.1.2.1 Physical: The South African Reserve Bank  
370 Church Street  
Pretoria  
0002  
Republic of South Africa;

19.1.2.2 Postal: P O Box 427  
Pretoria  
0001  
Republic of South Africa; and

19.1.2.3 Telefacsimile: (012) 313 3197.  
(Marked for the Attention - Secretary of the South African Reserve Bank)

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- 19.1.3 Transfer Secretary's office –
- 19.1.3.1 Physical: The South African Reserve Bank  
370 Church Street  
Pretoria  
0002  
Republic of South Africa;
- 19.1.3.2 Postal: P O Box 427  
Pretoria  
0001  
Republic of South Africa; and
- 19.1.3.3 Telefacsimile: (012) 313 4090.  
(Marked for the Attention - Transfer Secretary: Legal Services Department)

19.2 The Seller and/or the Buyer, as the case may be, shall be deemed to choose as their domicilium for all purposes relating to these Rules, including the giving of any notice, the payment of any sum, the serving of any process, the domicilium stipulated in the relevant Buy Form or the Sell Form, as the case may be, or in the event of any such form being silent, the last address stipulated in the register of Shareholders of the Bank.

19.3 The Bank, Transfer Manager and/or Transfer Secretary shall be entitled from time to time, by giving written notice to the shareholders, to vary their -

- 19.3.1 physical domicilium to any other physical address within the Republic;
- 19.3.2 postal domicilium to any other postal address within the Republic;
- 19.3.3 facsimile domicilium to any other facsimile number; and/or
- 19.3.4 e-mail domicilium to any other e-mail address within the Republic.

19.4 Any notice given or payment made to the Bank, the Transfer Manager, the Transfer Secretary, a Buyer and/or a Seller ("addressee") which is -

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19.4.1 delivered by hand between the hours of 08:00 and 15:00 on any Business Day to the addressee's physical domicilium shall be deemed to have been received by the addressee at the time of its delivery;

19.4.2 posted by prepaid registered post to the addressee's postal domicilium shall be deemed (unless the contrary is proved) to have been received by the addressee on the 14<sup>th</sup> (fourteenth) day after the date of posting.

19.5 Any notice given by any party to another which is successfully transmitted by facsimile to the addressee's facsimile domicilium shall be deemed (unless the contrary is proved) to have been received by the addressee on the day immediately succeeding the date of successful transmission thereof.

19.6 This paragraph shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the addressee other than by a method referred to herein.

19.7 Any notice in terms of, or in connection with these Rules shall be valid and effective only if in writing and if received or deemed to have been received by the addressee.

**20 GENERAL**

20.1 The Rules may be amended by the Board from time to time.

20.2 Should there be any conflict between the Rules and the annexures, the Rules shall apply.

20.3 The Board shall have a discretion in respect of any matters arising from time to time and not expressly dealt with in the Rules.

20.4 The Board shall be entitled to suspend, postpone or terminate the operation of the OTCSTF at any time, whether by reason of low levels of activity or otherwise, which suspension, postponement or termination shall be confirmed by a resolution of the Board.

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20.5 The Seller and the Buyer shall immediately indemnify the Bank and the Transfer Manager against the amount of any costs, charges and expenses of whatsoever nature incurred by the Transfer Manager in its sole and absolute discretion in securing or endeavouring to secure fulfilment of either of the Seller's or the Buyer's obligations or in otherwise exercising the Transfer Manager's rights in terms of the Rules, including the collection of commission, tracing charges and legal costs on the scale as between an attorney and his or her own client (together with any additional legal costs which may have been paid or are payable by the Seller or the Buyer for any such purpose), insurance premiums, storage charges, stamp duties, taxes and other fiscal charges, agent's and auctioneer's commissions and all other costs and expenses of valuation, maintenance, advertising and realisation.

20.6 The Bank shall be entitled, without obtaining the consent of the Shareholders, to appoint a Transfer Manager from time to time.

**BY ORDER OF THE BOARD**

**ISSUE DATE -**

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**ANNEXURE A – CM41 – BROKERS TRANSFER FORM**

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ANNEXURE B – BUY FORM

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South African Reserve Bank

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**South African Reserve Bank**  
 (Incorporated in the Republic of South Africa in terms  
 of The South African Reserve Bank Act, 1989 (Act No.  
 90 of 1989) ("SARB Act"))

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**Buy Form**

**Issued in terms of the Rules ("Rules") relating to the Over-the-Counter Share Transfer Facility ("OTCSTF") in respect of ordinary shares of the South African Reserve Bank ("Bank")**

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**Section A:**

**General Information**

- 1 This Buy Form relates to an offer to purchase ordinary shares in the Bank.
- 2 This Buy Form is submitted by the Buyer referred to in Section C in accordance with the provisions of the SARB Act, the Regulations framed in terms of Section 36 of the SARB Act ("Regulations") and the Rules.
- 3 Please refer to the conditions referred to in Section B before completing this Buy Form.
- 4 This Buy Form should be sent either -
  - 4.1 by hand to -

The Transfer Manager - Legal Services Department  
 The South African Reserve Bank  
 370 Church Street  
 Pretoria, 0002  
 Republic of South Africa;

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4.2 or by post to -

The Transfer Manager - Legal Services Department  
The South African Reserve Bank  
P O Box 427  
Pretoria, 0001  
Republic of South Africa;

4.3 or by facsimile transmission to -

The Transfer Manager -  
Legal Services Department at telefacsimile number (012) 313 4090;

4.4 or by e-mail to -

[OTCSTF@resbank.co.za](mailto:OTCSTF@resbank.co.za).

5 Each Buy Form submitted must be in one name only and show only one address.

6 The Transfer Manager may, for good cause, accept or reject any Buy Form, in whole or in part, particularly if the provisions set out in the SARB Act, the Regulations and the Rules have not properly been complied with.

7. Any prospective Buyer who submitted a successful Validated Buy Offer to the Transfer Manager's office will be notified in writing by the Transfer Manager of the receipt of such offer to buy. Such acknowledgement of receipt of the Buy Offer by the Bank will also serve as an advice that such Buy Offer is in full force for the Offer Period.

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**Section B:  
General Conditions**

- 1 Offers to buy may be withdrawn in writing once submitted to the Transfer Manager.
- 2 Buyers must submit only one Buy Form in respect of each offer to buy which will be matched in Receipt Sequence unless withdrawn by the Buyer in writing.
- 3 No receipts will be issued for Buy Forms lodged with the Transfer Manager.
- 4 All alterations on the Buy Form must be authenticated by full signature of the Buyer.
- 5 Share Certificates will be posted by registered post at the risk of the Buyer.
- 6 The Buyer's attention is drawn to the following restrictions and limitations on the right to acquire or hold shares in the Bank as envisaged in the SARB Act.
  - 6.1 Subject to the provisions of paragraphs 8 to 10 below, no person shall acquire or hold South African Reserve Bank shares ("SARB shares") of which the -
    - 6.1.1 total number; or
    - 6.1.2 the total number together with the total number of such shares already held by such person; or
    - 6.1.3 of which the total number, together with the total number of such shares already held by such person and by his or her associate or associates;

amounts to more than 10 000 of the issued shares in the Bank.

- 6.2 For the purpose of the application of paragraph 6.1.3 above,

" **associate**", in relation to a shareholder—

(a) if the shareholder is a natural person, means—

(i) a close relative of the shareholder; or

(ii) any person who has entered into an agreement or arrangement with the shareholder, relating to the acquisition, holding or disposal of, or the exercising of voting rights in respect of, shares of the Bank;

(b) if the shareholder is a juristic person—

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(i) which is a company, means any subsidiary or holding company of that company, any other subsidiary of that holding company and any other company of which that holding company is a subsidiary;

(ii) which is a close corporation registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), means any member thereof as defined in section 1 of that Act;

(iii) which is not a company or a close corporation as contemplated in this paragraph, means another juristic person which would have been a subsidiary of the first-mentioned juristic person—

(aa) had such first-mentioned juristic person been a company; or

(bb) in the case where that other juristic person, too, is not a company, had both the first-mentioned juristic person and that other juristic person been a company;

(iv) means any person in accordance with whose directions or instructions the board of directors of or, in the case where the juristic person is not a company, the governing body of the juristic person is accustomed to act; and

(c) in respect of all shareholders, being either natural or legal persons—

(i) means any 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 accustomed to act in accordance with the directions or instructions of the shareholder; and

(ii) includes any trust controlled or administered by the shareholder;”

- 7 A shareholder who holds, or holds in aggregate with his, her or its associates more than 10 000 shares in the Bank shall disclose in a manner as may be prescribed to the Bank the names of all his, her or its associates, as well as the number of shares held by each of them.
- 8 If at any time the number of shares in the Bank held by a shareholder, or held by that shareholder in aggregate with his, her or its associates, as the case may be, is reduced to 10 000 or less, the restriction referred to in 6.1 above, shall apply also to that shareholder.
- 9 No shares in the Bank shall be held in the name of or transferred to a nominee unless that nominee is a central securities depository as defined in Section 1 of the Safe Deposit of Securities Act, 1992.
- 10 A shareholder who is not ordinarily resident in the Republic shall not be entitled to any vote at any meeting of shareholders.
- 11 The above-mentioned summary is intended as a guide and is therefore not comprehensive. Please refer to the terms and conditions of the SARB Act, the

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Regulations and the Rules. Buyers should consult their stockbrokers, attorneys, bankers or other financial advisors in case of doubt as to the correct completion of this Buy Form.

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**Section C:**

**Declaration by Buyer**

To the Transfer Manager

1 I/we the undersigned, confirm that I/we -

1.1 have full legal capacity to contract;

1.2 have read and fully understand the SARB Act, the Regulations, the Rules and the contents of this document;

1.3 currently hold ..... (total number) of shares in the Bank;

1.4 have the following associate or associates who currently hold shares in the Bank:

Name, address and contact details of Associate(s)	Nature of relationship between Buyer and Associate(s)	Total number of shares currently held by associate(s)

1.5 confirm that I/we are lawfully entitled to purchase the maximum number of Bank shares specified below;

1.6 hereby irrevocably offer to purchase that number of shares specified below or any lesser number that may, in your absolute discretion, be sold by a willing Seller to me/us subject to the SARB Act, the Regulations and the Rules.

2 I/we understand that the offer to purchase Shares will, in the event of being unsuccessful, be treated as a standing offer for a period of not exceeding 3 (three) months in terms of the Rules.

**Dated:** \_\_\_\_\_

**Signature of Buyer:** \_\_\_\_\_

**Assisted by:** \_\_\_\_\_

**Capacity:** \_\_\_\_\_

(where applicable)

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**Section D:  
Offer Details**

<b>Title (Mr/Mrs /Ms/Other)</b>	.....
<b>Surname of individual or name of corporate body.</b>	..... .....
<b>First Names: in full (if an individual)</b>	..... .....
<b>Postal Address</b> (preferably P O Box address) Share Certificates will be sent to this address.	..... ..... ..... ..... Postal code:
<b>Physical Address</b>	..... ..... ..... ..... Postal code:

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<b>Phone (Work)</b>	Code : ..... Nr : .....
<b>Phone (Home)</b>	Code : ..... Nr : .....
<b>Cellphone</b>	Number: .....
<b>Telefacsimile</b>	Code : ..... Nr : .....
<b>E-Mail address</b>	.....
<b>Bank Account Details</b> Refunds will be deposited directly into this account, if applicable.	Account Holder: ..... Account Number: ..... Account Type: (Current, Saving or Transmission) ..... Bank: ..... Branch code: .....
<b>Total number of Shares Buyer offers to purchase</b>	..... ..... (Enter figures and words)
<b>Purchase Price per Share Buyer is willing to pay</b>	R ..... per share ..... ..... (Enter figures and words)
<b>Total amount Buyer is prepared to pay for all shares purchased.</b>	R ..... ..... ..... (Enter figures and words)

ANNEXURE C – CM42 - SECURITIES TRANSFER FORM

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REPUBLIC OF SOUTH AFRICA  
COMPANIES ACT, 1973

For exchange control purposes Form CM 42

SECURITIES TRANSFER FORM  
(Section 134)

Certification, if any, by issuer of security.

**A**

**FULL NAME OF ISSUER OF SECURITY AS SHOWN ON CERTIFICATE**

Quantity and full description of securities to be transferred	Figures	Words
	Description	
	Certificate (s) No.(s)	Distinctive number(s) (if any)

**TRANSFER FROM** [in block letters insert the full name(s) of the present registered holder(s)]

[transferor(s)]

I/We the undersigned hereby transfer the above securities from the name(s) aforesaid to the person(s) named below or to the several persons named in Part B of the Broker's Transfer forms (CM 41) relating to the above security

.....

.....

Date of signature ..... Stamp of selling broker

**B**

**TRANSFER TO** [in block letters insert the full name(s) and the postal address(es) of the person(s) into whose name(s) the securities are to be transferred].

[transferee(s)]

.....

.....

.....

**CONSIDERATION.** — State the amount (in figures) paid for the securities. If no consideration was paid, the market value of the securities at the date of the transaction must be stated.

R .....

I/We request that such entries be made in the register as are necessary to give effect to this transfer.

.....

.....

Name and address or stamp of person lodging this form or stamp of buying broker (if any)

THIS PORTION TO BE COMPLETED BY THE TRANSFEROR(S) (that is, the person(s) in whose name(s) the securities are at present registered.)

THIS PORTION TO BE COMPLETED BY THE TRANSFEREE(S) (that is, the person(s) in whose name(s) the securities are to be registered) OR AGENT, EXCEPT WHERE BROKER'S TRANSFER FORMS ARE USED.

DESIGNED FOR CERTIFICATION BY

NO REVENUE STAMPS (UNLESS BROKER'S TRANSFER FORMS ARE USED) OR ENDORSEMENT CLAIMING EXEMPTION IN TERMS OF THE Stamp Duties Act, 1968.

FOR USE IN REGISTERING OFFICE

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ANNEXURE D - SELL FORM

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South African Reserve Bank

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**South African Reserve Bank**  
(Incorporated in the Republic of South Africa in terms  
of The South African Reserve Bank Act, 1989 (Act No.  
90 of 1989) ("SARB Act"))

---

**Sell Form**

**Issued in terms of the Rules ("Rules") relating to the Over-the-Counter Share Transfer Facility ("OTCSTF") in respect of ordinary shares of the South African Reserve Bank ("Bank")**

---

**Section A:**

**General Information**

- 1 This Sell Form relates to an offer to sell ordinary shares in the Bank.
- 2 This Sell Form is submitted by the Seller referred to in Section C in accordance with the provisions of the SARB Act, the Regulations framed in terms of Section 36 of the SARB Act ("Regulations") and the Rules.
- 3 Please refer to the conditions referred to in Section B before completing this Sell Form.
- 4 This Sell Form should be sent either -
  - 4.1 by hand to -  
The Transfer Manager - Legal Services Department  
The South African Reserve Bank  
370 Church Street  
Pretoria, 0002  
Republic of South Africa;

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- 4.2 or by post to -  
The Transfer Manager - Legal Services Department  
The South African Reserve Bank  
P O Box 427  
Pretoria, 0001  
Republic of South Africa;
  
- 4.3 or by facsimile transmission to -  
The Transfer Manager -  
Legal Services Department at telefacsimile number (012) 313 4090;
  
- 4.4 or by e-mail to -  
[OTCSTF@resbank.co.za](mailto:OTCSTF@resbank.co.za).
  
- 5 Each Sell Form submitted must be in one name only and show only one address.
  
- 6 The Transfer Manager may accept or reject any Sell Form, in whole or in part if the provisions set out in the SARB Act, the Regulations and the Rules, have not properly been complied with.
  
- 7. Any prospective Seller who submitted a successful Validated Sell Offer to the Transfer Manager's office will be notified in writing by the Transfer Manager of the receipt of such offer to sell. Such acknowledgement of receipt of the Sell Offer by the Bank will also serve as an advice that such Sell Offer is in full force for the Offer Period.

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**Section B:**  
**General Conditions**

- 1 Offers to sell may be withdrawn in writing once submitted to the Transfer Manager.
  
- 2 Sellers must submit only one Sell Form in respect of each offer to sell which will be matched in Receipt Sequence unless withdrawn by the Seller in writing.
  
- 3 No receipts will be issued for Sell Forms lodged with the Transfer Manager.
  
- 4 All alterations on the Sell Form must be authenticated by full signature of the Seller.
  
- 6 The above-mentioned summary is intended as a guide and is therefore not comprehensive. Please refer to the terms and conditions of the SARB Act, the Regulations and the Rules. Sellers should consult their stockbrokers, attorneys, bankers or other financial advisors in case of doubt as to the correct completion of this Sell Form.

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**Section C:  
Declaration by Seller**

To the Transfer Manager

- 1 I/we the undersigned, confirm that I/we -
  - 1.1 have full legal capacity to contract; and
  - 1.2 have read the Rules, the SARB Act and the Regulations; and
  - 1.3 hereby irrevocably offer to sell that number of shares specified below or any lesser number that may, in your absolute discretion, be sold by me/us to a willing Buyer, subject to the SARB Act, the Regulations and the Rules.
  
- 2 I/we warrant that -
  - 2.1 I/we am/are the sole beneficial owner of the number of Shares specified below; and/or
  - 2.2 I/we am/are entitled and able to give free and unencumbered title to such Shares to any Buyer.
  
- 3 I/we understand that the offer to sell Shares will, in the event of being unsuccessful, be treated as a standing offer for a period not exceeding 3 (three) months in terms of the Rules.

Dated: \_\_\_\_\_

Signature of the Seller: \_\_\_\_\_

Assisted by: \_\_\_\_\_

Capacity: \_\_\_\_\_

(where applicable)

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Section D:

Offer Details

<b>Title (Mr/Mrs/Ms/Other)</b>	.....
<b>Surname of individual or name of corporate body.</b>	.....
<b>First names in full (if an individual)</b>	.....
<b>Postal Address</b> (preferably P.O. Box address)	..... ..... ..... Postal code: .....
<b>Physical Address</b>	..... ..... ..... Postal code: .....
<b>Phone (Work)</b>	Code : ..... No: .....
<b>Phone (Home)</b>	Code : ..... No : .....
<b>Cellphone</b>	Number: .....
<b>Telefacsimile</b>	Code : ..... No : .....
<b>E-Mail address</b>	.....
<b>Bank Account Details</b> All proceeds relating to this transaction will be paid directly into this account.	Account Holder: ..... Account Number: ..... Account Type: (Current, Saving or Transmission) ..... Bank: ..... Branch Code: .....

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<b>Total number of Shares offered by Seller for sale.</b>	..... ..... ..... ..... (Enter figures and words)
<b>Minimum price per share that Seller is willing to accept.</b>	R ..... per share ..... ..... ..... (Enter figures and words)
<b>Total minimum amount Seller is prepared to accept for all shares sold.</b>	R..... ..... ..... ..... (Enter figures and words)

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