IN THE ENFORCEMENT COMMITTEE ESTABLISHED IN TERMS OF SECTION 10(3), READ WITH SECTION 10A OF THE FINANCIAL SERVICES BOARD ACT, 97 OF 1990

CASE NO: **55/2011**

In the matter of:

THE REGISTRAR OF FINANCIAL SERVICES PROVIDERS Applicant

and

PAUL VENTER First Respondent

ROBERT MCLAREN BEHRENS Second Respondent

ORDER

WITH DUE CONSIDERATION to the settlement agreement (attached marked annexure "A") in terms of section 6B(7)(a) of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001, I hereby determine that the First and Second Respondents contravened section 3(a) of the Financial Advisory Services Regulations, 2003 (Regulations) prescribed in terms of section 35 of the Financial Advisory and Intermediary Services Act, no 37 of 2002 during the period 01 January 2011 until 31 August 2011 and impose a penalty of R100 000 to be paid jointly and severally by the First and Second Respondents on or before 29 February 2012. The remaining terms and conditions of the settlement agreement are incorporated and made an order of the Enforcement Committee.

I make no order regarding costs.

Signed at PRETORIA on 9 January 2012.

C. F. Eloff

Annexure A

IN THE ENFORCEMENT COMMITTEE ESTABLISHED IN TERMS OF SECTION 10(3), READ WITH SECTION 10A OF THE FINANCIAL SERVICES BOARD ACT, 97 OF 1990

CASE NO: **55/2011**

In the matter of:

THE REGISTRAR OF FINANCIAL SERVICES PROVIDERS Applicant

and

PAUL VENTER First Respondent

ROBERT MCLAREN BEHRENS Second Respondent

SETTLEMENT AGREEMENT IN TERMS OF SECTION 6B(7)(a) OF THE FINANCIAL INSTITUTIONS (PROTECTION OF FUNDS) ACT, 28 OF 2001

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1. **The parties**

1.1. The parties to the agreement are the Registrar of Financial Services Providers ("the Registrar") herein represented by German Emmanuel Anderson in his capacity as the Deputy Registrar of Financial Services Providers; and

1.2. The First Respondent is Mr Paul Venter ("Respondent 1"), an adult male with identity number 710526 5163 089, and whose principal place of business is 24 Edward Drive, Gillitts, Durban, 3610.

1.3. The Second Respondent is Mr Robert McLaren Behrens an adult male with identity number 710609 5019 087, and whose principal place of business is 18a Hillbrow Road, Kloof, 4000.

1.4. The First and Second Respondents will hereafter be referred to as the Respondents.

2. **WHEREAS**

2.1. The Registrar is of the opinion that the Respondents contravened the provisions of section 3(a) of the Financial Advisory Services Regulations, 2003 (Regulations) prescribed in terms of section 35 of the Financial Advisory and Intermediary Services Act, no 37 of 2002.

2.2. The Respondents wish to enter into a settlement agreement with the Registrar as contemplated in section 68(7)(a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001 ("the FI Act").

3. **The contravention**

3.1. It is agreed between the parties that the Respondents contravened the provisions of section 3(a) of the Regulations in that:

3.1.1. The Respondents during the period 1 January 2011 to 31 August 2011 and within the Republic of South Africa, canvassed for, marketed and/or advertised the rendering of financial services by a foreign based company, namely Safecap Investments Limited that trades as "Markets.com" (hereafter referred to as "Markets.Com").

3.1.2. Markets.Com was not authorised as a financial services provider nor was it a lawfully appointed representative of an authorised financial services provider.

4. **The mitigating circumstances**

4.1. It is also agreed that the following mitigating factors are relevant to the matter:

4.1.1. The Respondents accepted responsibility for the contravention;

4.1.2. The Respondents fully co-operated with the Registrar's investigation and the enforcement action.



5. **The agreed penalty**

5.1. In the light of the above, and in terms of section 6B(7)(a) of the FI Act, the parties have agreed that the Respondents will jointly and severally pay a penalty of R100 000.00 on or before 29 February 2012 in settlement of the matter.

5.2. The parties humbly request that the Honorable Chairperson makes the settlement an order, as envisaged in section 6B(7)(b) of the FI Act.

6. **Other conditions**

6.1. This agreement is subject to approval by the Enforcement Committee and the parties specifically record that they are aware of the possibility that the Enforcement Committee may not accept the terms of this agreement. If the Enforcement Committee declines to make this agreement an order, then in such event this agreement will be null and void.

6.2. If the Respondents do not comply with the terms of this agreement and it is necessary for the Registrar and/or the Financial Services Board (FSB) to proceed with legal proceedings, the Respondents herewith consent to pay all legal costs to the Registrar and/or the

FSB on the attorney and client scale in terms of the High Court Rules inclusive of collection commission and Value Added Tax.

6.3. No leniency or postponement given by the Registrar to the Respondent or any amendment to the terms and conditions of this agreement will be binding unless such postponement, leniency or amendment is reduced to writing and signed by the parties. Any leniency or postponement granted by the Registrar or any amendment to this agreement shall not be a novation of the cause of action in terms whereof the Respondent was found to have contravened the Act.

6.4. Any receipt of a payment by the Registrar after the due date shall be without prejudice to any of the rights of the Registrar and/or the FSB.

6.5. This agreement constitutes the whole agreement between the parties in respect of the offer to pay a penalty.

6.6. The parties choose as their *domicilium citandi et executandi* their respective addresses set out below for all purposes arising out of or in connection with this agreement at which addresses all the processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon

or delivered to the parties. However the notice contemplated in terms of section 6E of the FI Act may be delivered by electronic email. For the purpose of this agreement the parties' respective addresses shall be:

6.6.1. Financial Services Board
Block B, Riverwalk Office Park
41 Matroosberg Road
Ashlea Gardens ext 6
Pretoria
0081

6.6.2. First Respondent:
24 Edward Drive
Gillitts
Durban
3610

6.6.3. Second Respondent:
18a Hillbrow Road
Kloof
Durban
4000

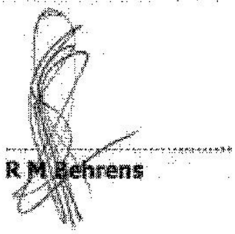
Signed at PRETORIA on 4 January 2012 on behalf of the Registrar

.....
G E Anderson

Signed at Durban on 15TH December 2011 by First Respondent

.....
P Venter

Signed at Durban on 16th December 2011 by Second Respondent



R M Behrens