

NOTICE 519 OF 2005

DEPARTMENT OF TRADE AND INDUSTRY

NOTICE OF INTENTION TO SUBSTITUTE NOTICE 713 OF 1 JUNE 1999

Notice is hereby given that the Minister of Trade and Industry intends promulgating the accompanying Notice No 520 of 2005.

Interested parties are invited to submit written representations, by no later than 22 April 2005, to –

The Registrar: Usury Act

Consumer and Corporate Regulation Division

Department of Trade and Industry

Private Bag X84

PRETORIA

0001

For attention: Mr Jeremiah Mela

Fax: 012-3942500

E-mail: jmela@thedti.gov.za

Kindly take note that the intended Notice No 520 of 2005 can be obtained from the above-mentioned contact persons or by visiting www.thedti.gov.za.

NOTICE 520 OF 2005**DEPARTMENT OF TRADE AND INDUSTRY****NOTICE IN TERMS OF SECTION 15A OF THE USURY ACT, 1968
(ACT NO. 73 OF 1968)**

In terms of section 15A of The Usury Act, 1968 (Act No. 73 of 1968), I, Mandisi Mpahlwa, Minister of Trade and Industry, hereby exempt the category of money lending transactions referred to in the Schedule from the provisions of the said Act with the exception of sections 13, 14, and 17A of the Act, on the conditions set out in the Schedule.

SCHEDULE**1. Definitions**

In this Schedule any word to which a meaning has been ascribed in the Usury Act 73 of 1968 ("the Act") shall have the meaning ascribed to it in the Act, and

- 1.1 1.1 "*annual rate for the total charge of credit*" means the total charge of credit expressed as a nominal annual percentage rate;
- 1.2 "*applicant*" means the person who has applied to be approved as the regulatory institution contemplated in paragraph 3.1;
- 1.2 1.3 "*category of money lending transaction*" means a money lending transaction in respect of which the loan amount –
- (a) does not exceed R 10 000,00;
 - (b) together with the total charge of credit which is owing by the borrower, shall be paid to the lender, whether in instalments or otherwise, within a period not exceeding

36 (thirty six) months after the date on which the sum of money has been advanced to the borrower; and

- (c) is not paid in terms of a credit card scheme or withdrawn from a cheque account with a bank registered in terms of the Banks Act, 1990 (Act No. 94 of 1990), or a mutual bank registered in terms of the Mutual Banks Act, 1993 (Act No. 124 of 1993), so as to leave such account with a debit balance;

1.4 “*credit bureau*” means a business which records the credit transactions and payment history of individual borrowers;

1.1 1.5 “*fees*” means the fees prescribed by the Minister from time to time, as set out in Appendix 2, which may include application fees, annual registration fees and certification fees, which fees shall be payable by the lender to the Regulatory Institution by not later than the dates prescribed by the Regulatory Institution in respect thereof. The Minister may prescribe different fees for different classes or categories of lenders and may prescribe the extent to which and the circumstances under which a particular fee may be refunded, if any.

1.3 1.6 “*loan amount*” means any monies, excluding insurance premiums, paid over to or on behalf of the borrower;

1.4 1.7 “*lender*” means a legal entity, which is registered with a regulatory institution;

1.5 1.8 “*national loans register*” means a register of loans established or approved by a regulatory institution containing information about loans advanced by lenders for the purpose of enabling lenders to determine the affordability of a loan;

1.9 “*notice*” includes this Schedule and Annexure “A”;

- 1.6 1.10 “*regulatory institution*” means a person approved by the Minister in terms of this Schedule;
- 1.7 1.11 “*regulatory institution’s rules*” means the rules of the regulatory institution as contained in this notice and as amended or substituted from time to time;
- 1.8 1.12 “*total charge of credit*” means all charges levied in respect of a money lending transaction, including, but not limited to, interest charges, but excluding insurance premiums.

2. **Conditions**

- 2.1 The category of money lending transaction is exempted on the condition that the entity concluding such transaction is at the time of conclusion thereof a lender.

3. **Approval of Regulatory Institutions**

2. 3.1 The Minister may by notice in the Government Gazette and upon written application approve a person as a regulatory institution for the purposes of this Schedule if ~
- 2.1 (a) the applicant is a company incorporated in terms of the Companies Act 61 of 1973;
- (b) the Minister is satisfied that the applicant ~
- (i) has a board of directors which is composed of, and which is required to be composed of, directors who in their aggregate represent the interests of consumers and the money lending industry in a balanced manner;

- (ii) has the capacity, resources and skills effectively to discharge its functions and duties as a regulatory institution.

3. 4. **Withdrawal of approval of a regulatory institution**

3.1 4.1 If the Minister has reason to believe that a regulatory institution fails to comply with the provisions of paragraph 3 of this Schedule in any material respect the Minister may give written notice to the regulatory institution, describing the nature of the failure, setting out the steps to be taken by the regulatory institution to remedy such failure and the period within which it must do so and stating that unless such steps are taken within the said period the Minister will withdraw approval of the regulatory institution.

4.2 If the Minister believes that the regulatory institution has failed to take the steps set out in the aforesaid notice within the period provided for therein the Minister must by written notice to such institution afford it a period of 14 days within which to make representations to the Minister as to why approval of the regulatory institution should not be withdrawn.

4.3 If, having considered such written representations as the regulatory institution may make, the Minister is not satisfied that good cause has been shown why approval of the regulatory institution should not be withdrawn, the Minister shall withdraw such approval.

4. 5. **Repeal of Notice and Transitional Provisions**

4.1 5.1 Government Notice No. 713 of 1 June 1999 is hereby repealed with effect from the date upon which this Notice comes into effect.

- 4.2 5.2 Notwithstanding the repeal of Government Notice No. 713 of 1 June 1999 any institution approved as a regulatory institution under that Notice, shall be deemed to have been approved as a regulatory institution under this Schedule.
- 4.3 5.3 This Notice shall, with effect from the date of commencement, bind any regulatory institution approved under Government Notice No. 713 of 1 June 1999 and any lender registered with it, whether or not such registration occurred prior to or after such date.

ANNEXURE "A"**RULES FOR REGULATION IN TERM OF SECTION 15A OF THE ACT****1. RULES**

These Rules, together with the registration application form completed by the lender on application, the registration renewal form completed by the lender annually and the registration certificates issued pursuant thereto by the Regulatory Institution, shall comprise an agreement between the parties.

2. DEFINITIONS

2.1. In these rules, unless otherwise indicated by the context –

2.1.1. **“accredited professional”** means a member or associate of a professional body accredited by the Regulatory Institution to perform the agreed upon procedures;

2.1.2. **“agent”** means a person contemplated in Rule 6 and includes an employee and/or intermediary of such person;

2.1.3. **“agreed upon procedures”** means the list of procedures to be completed by an accredited professional as determined by the Regulatory Institution from time to time;

2.1.4. **“annual registration fee”** means the annual registration fee to be paid to the Regulatory Institution at the time of application by the lender for purposes of its registration with the Regulatory Institution in the first year by way of a bank certified cheque, and thereafter for the renewal of its registration in the amounts prescribed from time to time in Table 2 of Appendix 2;

2.1.5. **“appeals committee”** means the committee established to consider appeals in respect of decisions of the Regulatory Institution or a disciplinary committee as contemplated in Rule 11 below;

2.1.6. **“application fee”** means the application fee prescribed in Table 1 of Appendix 2 from time to time and payable to the Regulatory Institution for purposes of considering an application for registration as a lender and for the

- amendment of any conditions pertaining to the registration of the lender, as the case may be, payable by certified cheque;
- 2.1.7. "**business day**" excludes any Saturday, Sunday, or public holiday;
- 2.1.8. "**business premises**" means any place where a lender or any person representing the lender interacts with the general public regarding micro loans, irrespective of where the lender finally concludes the loan agreement;
- 2.1.9. "**certification fee**" means an annual fee payable by the lender to the Regulatory Institution in respect of each of its business premises, in an amount prescribed in Table 3 of Appendix 2 from time to time;
- 2.1.10. "**client**" means a person with whom the lender has concluded a financial transaction which is still current or which has terminated within the preceding twelve months;
- 2.1.11. "**current loan**" means a loan in respect of which the account of the loan with the lender has not been closed by the lender;
- 2.1.12. "**data**", for purposes of the national loans register, means any information regarding borrowers, including payment profile data;
- 2.1.13. "**disciplinary committee**" means a committee appointed to deal with the non-compliance by lenders with these Rules as contemplated in Rule 10 below, which may hear any specific matter or matters in general;
- 2.1.14. "**information brokers**" means persons appointed by the Regulatory Institution from time to time to manage the national loans register;
- 2.1.15. "**loan agreement**" means any loan agreement, acknowledgement of debt or other lending instrument concluded or to be concluded between a lender and a borrower;
- 2.1.16. "**payment profile data**", for purposes of the national loans register, means information regarding a borrower and any loan entered into by the borrower contained in the payment profile data layouts;

- 2.1.17. **“person”** means a person whether natural or corporate and whether incorporated or not;
- 2.1.18. **“prosecuting officer”** means a person employed, appointed or contracted by the Regulatory Institution for the purpose of presenting a matter before a disciplinary committee;
- 2.1.19. **“report on factual findings”** means a report to be issued by the accredited professional who completed the agreed upon procedures in the format determined by the Regulatory Institution from time to time;
- 2.1.20. **“registration application form”** means the form to be completed by a lender who wishes to be registered with the Regulatory Institution or who requires amendment to the conditions of its registration;
- 2.1.21. **“registration certificate”** means the annual certificate of registration issued by the Regulatory Institution to the lender confirming the registration of the lender and includes a provisional registration certificate issued by the Regulatory Institution confirming the provisional registration of the lender;
- 2.1.22. **“registration criteria”** means the criteria prescribed from time to time for purposes of the registration of a lender which at the time of the publication of these Rules, comprise the criteria set out in **Appendix 1**;
- 2.1.23. **“registration renewal form”** means the form to be completed annually by a lender who wishes to renew its registration with the Regulatory Institution;
- 2.1.24. headings shall not be taken into account in the interpretation of these Rules, reference to one gender shall be deemed to include reference to the other and reference to the singular shall be deemed to include reference to the plural and *vice versa*;
- 2.1.25. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only a definition clause, effect shall be given to it as if it were a substantive provision in the body of these Rules;
- 2.1.26. when any number of days is prescribed in these Rules, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a

Saturday, Sunday or statutory holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or statutory holiday;

- 2.1.27. where figures are referred to in numerals and words, if there is a conflict between the two, the words shall prevail;
- 2.1.28. any reference to a provision of any law shall be interpreted as the corresponding provision of any substituting law;
- 2.1.29. each Rule is severable from the other and shall be unaffected by the validity or enforceability of any other Rule.

3. REGISTRATION AND RELATED MATTERS

3.1. Application and General Compliance

A lender wishing to be registered with the Regulatory Institution shall make application to the Regulatory Institution at its registered address by submitting to it a completed registration application form and any other documents requested by the Regulatory Institution together with the application fee, the annual registration fee and certification fees for the first year, and shall undertake to comply with the Rules.

3.2. Information and Inspection

The lender shall at the request of the Regulatory Institution furnish it with any information reasonably required and allow such inspection of documents as may be necessary to enable the Regulatory Institution to determine whether the lender meets the registration criteria.

3.3. Notification

The Regulatory Institution shall within a reasonable period, as from the receipt of the registration application and any other documents requested by the Regulatory Institution, notify the lender of its decision whether to issue a registration certificate and of any conditions determined by the Regulatory Institution.

3.4. Provisional Registration

Without derogating from the general power to impose conditions of registration, the Regulatory Institution may issue a provisional registration certificate for a determined period, or such extension thereof, as the Regulatory Institution may in its sole discretion

determine, where the lender is not in a position to meet the registration criteria at the time of application but where the Regulatory Institution has reason to believe the lender will meet the registration criteria within the determined period, failing which the provisional registration shall lapse.

3.5. **Registers**

The Regulatory Institution shall keep a register of lenders, which it shall keep up to date and which shall be open to inspection by members of the public at its registered address during normal office hours free of charge. The Regulatory Institution may from time to time publish a list of lenders de-registered by the Regulatory Institution and make copies thereof available to any person including the press.

3.6. **Review**

The Regulatory Institution may from time to time on application made to it by the lender, or of its own accord, review the conditions pertaining to the registration of a lender or may impose further conditions and may for this purpose inquire into the business of the lender. The Regulatory Institution shall first provide the lender with an opportunity to make representations to it before imposing more stringent conditions.

3.7. **Notification**

Where the Regulatory Institution in its discretion decides to -

- 3.7.1. reject an application for registration;
- 3.7.2. grant an application for registration subject to conditions;
- 3.7.3. determine further conditions of registration; or
- 3.7.4. suspend or cancel the registration of a lender;

the Regulatory Institution shall advise the lender in writing within 20 (twenty) business days of the date of the Regulatory Institution's decision and the reasons therefore.

3.8. **Reasons**

The lender may request the Regulatory Institution to provide reasons for any decision relating to the registration, de-registration, suspension, or cancellation of the membership or relating to any disciplinary action against the lender. The Regulatory Institution shall issue such reasons in writing within a reasonable period, not exceeding 90 (ninety) days.

3.9. Confidentiality and Publication of Information

Any information provided by a lender to the Regulatory Institution shall be treated with confidence; provided that the Regulatory Institution shall be entitled to publish and disclose information if required in terms of the provisions of any statute, regulation or exemption or a court order or if it is necessary to disclose or publish such information in the public interest or on other grounds considered appropriate by the Regulatory Institution.

3.10. Information Pertaining to Annual Renewal of Registration

3.10.1. The lender shall annually –

3.10.1.1. make application to the Regulatory Institution for the renewal of its certificate of registration in the form and in the manner determined by the Regulatory Institution not later than 30 (thirty) calendar days prior to the date of the annual anniversary of the date of initial registration; and

3.10.1.2. submit such detailed information or documentation as may be required by the Regulatory Institution relating to anything contemplated in the registration renewal form or otherwise of relevance to the registration of the lender within 20 (twenty) calendar days of receipt of written notification from the Regulatory Institution or such further extended period as the Regulatory Institution, in its discretion, may allow.

3.11. Information Pertaining to Changes in Lender's Business

The lender shall inform the Regulatory Institution in writing within a period of 30 (thirty) days if -

3.11.1. the lender stops trading;

3.11.2. the lender becomes unable to discharge its debts promptly and in full;

3.11.3. there is a change in the control or ownership of the lender;

- 3.11.4. new directors, trustees or managing members have been appointed; or
- 3.11.5. there is any change having an impact on the ability of the lender to meet requirements for its registration in terms of these Rules.

3.12. Records

The lender shall -

- 3.12.1. keep a loan register reflecting details of all loans advanced to borrowers including the name, address and contact details of the borrower, the amount advanced, the date of such advance and any such information as may be required by the Regulatory Institution;
- 3.12.2. keep records and copies of all loan agreements filed and referenced to the loan register for a period of 3 (three) years as from the date of termination of the loan agreement;
- 3.12.3. keep a register and records of written complaints received from borrowers and all correspondence relating to such complaints for a period of 3 (three) years as from date of termination of the loan agreement;
- 3.12.4. submit to the Regulatory Institution at its request copies of all written complaints received by the lender, the responses of the lender thereto and details pertaining to the outcome of any dispute or litigation in relation thereto.

3.13. Powers of the Regulatory Institution

The Regulatory Institution may-

- 3.13.1. register a lender;
- 3.13.2. inspect a lender for compliance with these Rules and/or the lender's conditions of registration;
- 3.13.3. at any time request such information reasonably required to discharge its functions and duties as a Regulatory Institution;
- 3.13.4. amend the conditions of the lender's registration;
- 3.13.5. demand compliance with these Rules and/or conditions of registration;
- 3.13.6. cancel the lender's registration;

- 3.13.7. impose fines or penalties on the lender in accordance with these Rules in lieu of cancellation;
- 3.13.8. suspend the lender's registration pending compliance with these Rules, the conditions of registration and/or an instruction of the Regulatory Institution.

3.14. Grounds for Acting in terms of Rule 3.13.4 to 3.13.8

The Regulatory Institution may act in accordance with Rule 3.13.4 to 3.13.8 above if the lender -

- 3.14.1. is in breach of any provision of these Rules;
- 3.14.2. fails to comply with any condition of registration;
- 3.14.3. acts in a manner which is likely to bring the money lending industry or the Regulatory Institution into disrepute;
- 3.14.4. ceases to trade or resolves to do so;
- 3.14.5. fails to discharge its debts promptly and in full;
- 3.14.6. is or becomes subject to substantially the same ownership, management or control as a lender whose registration has been cancelled or which is not registered with the Regulatory Institution;
- 3.14.7. fails to pay any amount owing to the Regulatory Institution;
- 3.14.8. fails to respond within 20 (twenty) business days from the date of the recorded delivery of a letter from the Regulatory Institution;
- 3.14.9. provides any false or materially incorrect information to the Regulatory Institution or fails to disclose any material information to the Regulatory Institution;
- 3.14.10. fails to comply with any instruction of the Regulatory Institution;
- 3.14.11. fails to pay its annual registration fee within 20 (twenty) business days after having been notified that it is due;
- 3.14.12. fails to comply with any penalty imposed by the disciplinary committee;
- 3.14.13. fails to pay a fine before the due date for payment thereof as contemplated in Rule 10;

3.14.14. fails to provide any documentation notified by the Regulatory Institution within 20 (twenty) business days after having been requested, or such other reasonable period as notified by the Regulatory Institution in any particular case; or

3.14.15. if the Regulatory Institution has other reasonable grounds for doing so.

3.15. Notice of Intention to Cancel Registration

The Regulatory Institution shall not exercise any of its powers in terms of Rule 3.13.4 to 3.13.8 above without first giving the lender written notice of its intention to do so and having allowed it 15 (fifteen) business days or such further extended period as the Regulatory Institution, in its discretion, may allow to remedy or explain to the satisfaction of the Regulatory Institution any such breach, failure or non-compliance.

3.16. Automatic Cancellation

The registration of a lender shall be automatically cancelled if -

3.16.1. an application for the provisional or final liquidation of the lender is granted by a competent court;

3.16.2. the lender is de-registered as a close corporation, company, co-operative, trust, statutory entity, mutual bank and/or bank, as the case may be.

3.17. Obligations upon Cancellation

Upon cancellation of registration, the lender shall -

3.17.1. immediately upon notification thereof return its registration certificate to the Regulatory Institution and cease to hold itself out as a lender registered with the Regulatory Institution; and

3.17.2. cease to trade as a lender unless it shall, with immediate effect, comply with the provisions of any applicable law, including the provisions of the Usury Act, 1968, to the full extent thereof as if no exemption was applicable in respect of the lender.

3.18. Correspondence

3.18.1. All correspondence under these Rules will be addressed to the lender's address registered with the Regulatory

Institution or the Regulatory Institution's address, as the case may be.

3.18.2. Any correspondence may be sent by registered post to the addresses referred to in Rule 3.18.1 above in which case it shall be deemed to have been received by not later than 10 (ten) business days as from the date of posting or may be delivered by hand or courier in which case it shall be deemed to have been received when so delivered or may be sent by telefax in which case it shall be deemed to have been received upon recordal of successful transmission by the sending station.

3.18.3. The lender shall give the Regulatory Institution written notice of any change of address or contact numbers within 10 (ten) business days of such change.

3.19. Indemnity

The Regulatory Institution, its servants or agents shall have no liability whatsoever or howsoever arising to any lender in respect of any claim for damages, expenses or other compensation relating to any act or omission, save for such act or omission constituting wilful misconduct, in or about any proceedings under these Rules.

4. RULES PERTAINING TO LENDING ACTIVITIES

4.1. Usury Act Exemption Compliance

The lender shall comply with the conditions of the Usury Act Exemption.

4.2. Credit Criteria and Policies

The lender shall approve or decline loan applications in accordance with objective commercial non-discriminatory lending criteria.

4.3. Compliance of Loan Agreement and Applicable Law

The lender shall adhere to the provisions of the loan agreement concluded with the borrower and any applicable law pertaining to the business of money lending, including, to the extent applicable, any insurance, harmful business practice or other applicable consumer legislation.

4.4. Bank Accounts and Records

4.4.1. The lender shall operate its lending business through a bank account or accounts separate from any personal finances.

- 4.4.2. The lender shall maintain a proper set of accounting records reflecting full details of all money advanced, interest and other charges raised, repayments received and the amounts outstanding.

4.5. **Display of Registration Certificate**

The lender shall prominently display a valid registration certificate in each of its business premises, as well as a notification sticker in a format determined by the Regulatory Institution, that identifies it as a lender registered with the Regulatory Institution.

5. **OBLIGATIONS OF A LENDER**

5.1. **Confidentiality**

- 5.1.1. The lender shall not disclose, without the express consent of the borrower, any confidential information obtained in the course of a money lending transaction.
- 5.1.2. Should the lender wish to obtain from or to disclose to a credit bureau and/or the national loans register the borrower's credit record and payment history, the borrower's consent shall be obtained through specific and prominent clauses in the application for the relevant money lending transaction or other documentation signed by the borrower.

5.2. **Disclosure**

- 5.2.1. The lender shall at each of its business premises conducting business in respect of the category of money lending transactions keep available a copy of the rules set in this Annexure. These rules shall be made available to the borrower for perusal prior to entering into the money lending transaction.
- 5.2.2. The lender shall at each of its business premises conducting business in respect of the category of money lending transactions display prominently ~
- 5.2.2.1. a copy of the lender's registration certificate issued by the regulatory institution; and
 - 5.2.2.2. the complaints procedure and the manner in which and where complaints may be lodged.
- 5.2.3. The lender shall use standard written agreements, containing all the terms and conditions of the money

lending transactions and clearly reflecting the rights and obligations of the borrower and the lender.

5.2.4. The lender shall provide the borrower, prior to the conclusion of the money lending transaction and at the conclusion of the agreement, with a schedule setting out -

- 5.2.4.1. the loan amount in rands and cents;
- 5.2.4.2. the total amount repayable in rands and cents, at the then current interest rate, over the repayment period;
- 5.2.4.3. the amount of the total charge of credit in rands and cents, at the then current interest rate, over the repayment period and the elements comprising the total charge of credit;
- 5.2.4.4. the annual rate for the total charge of credit, whether this is fixed or variable, and, if variable, how it may vary;
- 5.2.4.5. the nature and amount of any insurance, including the name of the insurer;
- 5.2.4.6. the penalty interest and any additional costs that would become payable in the case of default by the borrower or how that would be calculated;
- 5.2.4.7. the instalment amount in rands and cents at the then current interest rate, and the number of instalments; and
- 5.2.4.8. the repayment period in respect of the money lending transaction;

5.2.5. The lender shall, in a language understood by the borrower before the conclusion of the agreement, explain the essential terms of the money lending agreement to the borrower so as to ensure that the meaning and consequences of the agreement are understood.

5.2.6. The lender shall, before the conclusion of the money lending agreement, allow the borrower an opportunity to read the agreement, or have it read to the borrower in the instance where the borrower is illiterate.

- 5.2.7. The lender shall provide the borrower with a copy of the signed money lending agreement before or at the time of advancing the loan amount.
- 5.2.8. The lender shall maintain a proper set of accounting records reflecting full details of all money advanced, interest and other charges raised, repayments received and the amounts outstanding.
- 5.2.9. The lender shall on demand provide the borrower with a statement setting out all charges levied, all payments made and the balance outstanding. A charge may be levied for the provision of a duplicate copy of a statement, but may not exceed R3.50 per page of the statement.
- 5.2.10. Should the lender decline a money lending application, the lender shall at the request of the borrower provide the main reasons therefore. If such reason includes an adverse credit record recorded with a credit bureau, the name and details of the relevant credit bureau will be provided to the borrower by the lender so as to enable the borrower to check the accuracy of the credit information held by the credit bureau and/or to obtain advice from the credit bureau on how to improve the record.
- 5.2.11. The lender shall inform the borrower in writing at least 28 (twenty eight) calendar days beforehand, by way of a notice addressed to the domicilium of the borrower, of the lender's intention to forward adverse information to any credit bureau, which information is to be accessed by subscribers to the credit bureau, before forwarding any such information to the relevant credit bureau.
- 5.2.12. Where any amount owing by the borrower is disputed by the borrower, that fact shall be communicated to the credit bureau when providing information to it.

5.3. Consideration

- 5.3.1. The lender shall not charge any fee to be paid by the borrower in circumstances where the money lending transaction is not granted or money is not paid out to the borrower in respect of the money lending transaction by the lender. This excludes fees charged for evaluating or preparing business plans.
- 5.3.2. The borrower may make additional payments or settle the outstanding amount in one payment where the repayment period does not exceed 12 (twelve) months. Where the

repayment period exceeds 12 (twelve) months and where the borrower wishes to settle the outstanding amount in one payment, the lender may require up to 60 (sixty) days written notice of the borrower's intention to settle the outstanding amount in one payment, but only if such period was stipulated in the written agreement and does not exceed 60 (sixty) days. No penalty may be charged for the settlement of the outstanding amount in the case of retrenchment of the borrower. Irrespective of the repayment period only pro-rata total charge of credit and insurance may be charged.

5.4. Cooling-off period

5.4.1. The lender shall, in terms of the provisions of the agreement with the borrower, allow the borrower to terminate the money lending agreement within a period of 3 (three) business days after the date of the signing of the agreement, and, where the loan amount has been advanced, simultaneously to repay the loan amount advanced to the lender.

5.4.2. Should the borrower terminate the money lending agreement within such period after having received the money, the lender shall, upon the borrower offering simultaneously to repay the total amount advanced to the borrower, only be entitled to stipulate for, demand or receive from the borrower, charges of credit at the annual rate for the total charge of credit applicable to the agreement.

5.5. Collection methods

5.5.1. The lender shall not take possession of or make use of personal information such as pin codes and bankcards as security or collection arrangements.

5.5.2. The lender shall not permit, require or demand of the borrower to sign any blank process documents.

5.5.3. The lender shall not collect or attempt to collect any amounts for costs exceeding costs allowed for in terms of the Magistrates' Court Act, 1944, (Act No. 32 of 1944), the Attorneys Act, 1979, (Act No. 53 of 1979) or the Debt Collectors Act, 1998, (Act No. 114 of 1998).

5.5.4. The lender shall not make use of any unlawful, unreasonably oppressive or burdensome collection methods.

5.6. National Loans Register

The lender shall submit information in respect of a money lending transaction concluded by the lender, falling within the category of money lending transaction, to a national loans register in the manner and form determined by the Regulatory Institution.

5.7. Reckless lending

The lender shall, prior to entering into a money lending transaction with a borrower, consider the ability of the borrower to meet the required repayments in respect of the money lending transaction from the borrower's regular income, having regard at least to the following:

- 5.7.1. information on the national loans register and other information available to the lender in respect of the debt obligations of the borrower;
- 5.7.2. information provided by the borrower in the loan application form, which application form shall include information pertaining, amongst others, to the borrower's current and anticipated obligations in respect of loan repayments;
- 5.7.3. additional information otherwise disclosed by the borrower to the lender;
- 5.7.4. the nature of the loan and the purpose for which it is required; and
- 5.7.5. the borrower's borrowing behaviour reasonably available or known to the lender.

6. AGENTS, INTERMEDIARIES AND EMPLOYEES

- 6.1. The lender shall ensure that its employees, agents and intermediaries soliciting, completing or concluding loan agreements are adequately trained with regard to the Usury Act Exemption, the Rules and consumer rights generally.
- 6.2. The lender shall be responsible for any contravention of the Usury Act Exemption or these Rules by an employee or any person acting as the lender's agent and/or intermediary.
- 6.3. The lender shall ensure that no person shall solicit, complete or conclude loan agreements on its behalf or for its benefit, unless

such a person is an employee or the lender shall have concluded a written agreement with the person –

- 6.3.1. appointing such person as the lender's agent and/or intermediary;
- 6.3.2. obliging the agent and/or intermediary to comply with the Usury Act Exemption and the Rules;
- 6.3.3. entitling the lender to terminate the agreement in the event of non-compliance with the Usury Act Exemption or the Rules;
- 6.3.4. generally ensuring compliance with the Usury Act Exemption and these Rules.

6.4. The lender shall maintain a register of agents and/or intermediaries, which shall contain all relevant information regarding an agent and/or intermediary and its appointment.

6.5. The lender shall ensure that loan agreements concluded with borrowers shall disclose the name and identity number of the person having interacted with the borrower in soliciting, completing and concluding the loan agreement and whether such person is an employee or agent and/or intermediary.

6.6. The lender shall ensure that its agent and/or intermediary shall, when interacting with borrowers, identify itself to the borrower by means of an identity card reflecting the name of the agent, his or her identity number, the identity and logo of the lender, as well as a photograph of the agent and/or intermediary, which shall be in a format determined by the Regulatory Institution.

6.7. The lender shall, in its loan agreement, disclose whether any commission is payable to the agent and/or intermediary.

7. NATIONAL LOANS REGISTER

7.1. Submission of Information

The lender shall submit to an information broker accurate data in respect of all loans granted for purposes of such data being captured on the national loans register in accordance with this Rule 7.

7.2. Enquiries

7.2.1. The lender shall not obtain information from the national loans register except for the purposes of:

- 7.2.1.1. conducting an affordability enquiry in respect of a borrower who has made application to the lender for a loan;
 - 7.2.1.2. updating the lender's records pertaining to a client of the lender, or
 - 7.2.1.3. marketing financial products to a client of the lender.
- 7.2.2. The lender shall not use the national loans register for the marketing of financial products to persons who are not clients of the lender or for competitive purposes.

7.3. **Loan Registration**

The lender shall, by no later than 2 (two) business days after granting the loan, register any loan granted by the lender by submitting payment profile data to an information broker to be captured on the national loans register in the format of the payment profile data file layout determined by the Regulatory Institution.

7.4. **Submission of Updated Information regarding Current Loans**

The lender shall, by no later than 5 (five) business days after the last day of the lender's accounting period in respect of each month, submit updated payment profile data in the format of the prescribed payment profile data file layout in respect of all current loans to an information broker to be captured on the national loans register.

7.5. **Closure of Account**

The lender shall by no later than 2 (two) business days after the closure of an account in respect of a loan, submit information regarding the closure of such account to an information broker to be captured on the national loans register.

7.6. **Warranty**

- 7.6.1. By submitting data to an information broker, the lender warrants to the information broker and the Regulatory Institution that -
- 7.6.1.1. the lender has applied its best endeavours in ensuring that the information supplied to the national loans register is accurate and verifiable;
 - 7.6.1.2. the prior express consent of the borrower to obtain from or disclose to a third party the

borrower's credit record, payment history or other confidential information has been obtained through prominent and specific clauses in the loan agreement;

- 7.6.1.3. the information is not in dispute, or where disputed, that details of such dispute have already been forwarded to the information broker to be captured on the national loans register.

7.7. Dispute Resolution and Verification of Data

- 7.7.1. If the completeness or accuracy of any data in respect of a borrower contained on the national loans register is disputed by a borrower, the lender shall -

- 7.7.1.1. register the dispute in a register for a period of 3 (three) years;
- 7.7.1.2. investigate the dispute in order to determine whether data contained on the national loans register is incomplete or inaccurate;
- 7.7.1.3. record the result of such investigation on the register referred to in Rule 7.7.1.1 for a period of 3 (three) years;
- 7.7.1.4. advise the borrower of the result of such investigation;
- 7.7.1.5. if the data is incomplete or inaccurate, ensure that complete and accurate data is reflected on the national loans register within 10 (ten) business days of the date upon which the dispute was logged;
- 7.7.1.6. if the data is incorrect or inaccurate in the records of the lender, ensure that such records are amended to reflect the correct and accurate data to ensure that no future data submissions regarding that borrower or loan to the national loans register contain such incorrect or inaccurate information.

- 7.7.2. If the lender receives an enquiry from an information broker regarding the completeness or accuracy of any data, the lender shall, within a period of 10 (ten) business days from receipt of the enquiry, confirm the accuracy of

disputed data and provide relevant supporting documentation or provide revised data to the information broker.

7.8. Obligation to Provide Information to Borrower

If a lender rejected a borrower's application for a loan either wholly or partly because of data captured on the national loans register, the lender shall inform the borrower that the application has been rejected and inform him or her of his or her right to request the nature of the information and the name and address of the relevant information broker. Upon request from the borrower, which request shall be made no later than 30 (thirty) calendar days after notification of rejection of the application to the borrower, the lender shall inform the borrower of the nature of the data and supply the name and address of the relevant information broker from which such data was obtained.

7.9. Ownership of Data

Ownership and accountability for the correctness of the data supplied to an information broker for capturing on the national loans register shall vest in the Regulatory Institution.

7.10. Confidentiality

The lender shall treat the data received from the national loans register in the strictest confidence and utilise same only for the purpose contemplated in Rule 7.2. The lender shall not allow access to the national loans register or national loans register data to any third party, whether or not a subsidiary of the lender or by contractual arrangement.

7.11. Inspection

The Regulatory Institution shall be entitled to recover the costs of such inspection from the lender where such inspection reveals non-compliance with this Rule 6.

7.12. Limitation of Liability

Without detracting from the generality of Rule 3.19 the Regulatory Institution shall not be held liable in the event of any damages suffered by the lender, including, but not limited to loss of profit, loss of saving or other incidental or consequential damages arising out of the use of the national loans register or the inability to use the national loans register, whether the claim is based in contract,

delict, breach of statutory duty, principles of indemnity or otherwise howsoever, save where such claim is based upon the wilful misconduct of the Regulatory Institution.

8. ACCOUNTING MATTERS

- 8.1. The annual financial statements of the lender shall be prepared in accordance with generally accepted accounting practice, any applicable legislation and such requirements as may be determined by the Regulatory Institution.
- 8.2. Without detracting from anything contained in the registration criteria, the lender shall, from time to time, appoint an accredited professional to perform agreed upon procedures and to issue a report on factual findings.
- 8.3. In the event that the lender is required by statute or otherwise to appoint an auditor to conduct an audit of its financial statements, the auditor so appointed by the lender shall be required to perform the agreed upon procedures and to issue the report on factual findings.
- 8.4. In the event that the lender is required by statute or otherwise to appoint an accounting officer to report on the financial statements, the accounting officer so appointed by the lender shall be required to perform the agreed upon procedures and to issue the report on factual findings. Such accounting officer shall not be a member or employee of the lender.
- 8.5. No appointment of an accredited professional, other than an uninterrupted reappointment, shall take effect unless it has been approved by the Regulatory Institution.
- 8.6. The Regulatory Institution may require the accredited professional of the lender to confirm compliance with any of the provisions of the Usury Act Exemption or these Rules and the lender hereby authorises its accredited professional from time to time to provide information required by the Regulatory Institution on request at the cost of the lender.
- 8.7. The furnishing in good faith by an accredited professional of a report or information in terms of Rule 8.6 shall not be deemed to constitute a contravention or a breach of a provision of a Code of Professional Conduct to which the member or associate is subject.

- 8.8. The Regulatory Institution may, based on the misconduct or misrepresentation of an accredited professional, within the Regulatory Institution's discretion, disallow such accredited professional from acting as accredited professional to any lender.

9. REPORTING

- 9.1. The lender shall provide the Regulatory Institution with statistical returns in the format and at an interval determined by the Regulatory Institution. These must be received by the Regulatory Institution within 45 (forty five) days of the last day of the period to which the statistical return relates.
- 9.2. The lender shall provide the Regulatory Institution with a consolidated annual statistical return in the format determined by the Regulatory Institution in respect of the periods set out in Rule 9.1 immediately preceding the lender's financial year-end within 4 (four) months of the lender's financial year-end.
- 9.3. The lender shall provide the Regulatory Institution with a certificate of compliance in the format determined by the Regulatory Institution within 4 (four) months of the lender's financial year-end.
- 9.4. The lender shall provide the Regulatory Institution with certified copies of its financial statements, including the auditor's or accounting officer's report, and the report on factual findings of the accredited professional within 4 (four) months of its financial year-end.
- 9.5. The lender shall from time to time, and at such intervals as determined by the Regulatory Institution, provide the Regulatory Institution with such other reports as may be required, in the format determined by the Regulatory Institution.

10. DISCIPLINARY RULES

10.1. Disciplinary Committee

- 10.1.1. The Regulatory Institution may appoint one or more disciplinary committees and appoint a chairperson in respect of any such committee. A disciplinary committee may be appointed to hear any specific matter or matters in general.
- 10.1.2. The members of a disciplinary committee shall be independent persons comprising 2 (two) Directors of the

- Regulatory Institution who are not representing the interests of lenders and 1 (one) person who has been in legal practice for a period of not less than 10 (ten) years, who shall act a chairperson of the disciplinary committee.
- 10.1.3. Without detracting from the powers of the Regulatory Institution to act in terms of these Rules and in addition to any powers of the disciplinary committee in terms of these Rules, a disciplinary committee may exercise all powers of the Regulatory Institution in relation to the non-compliance by a lender with these Rules and specifically the powers set out in Rules 3.13 and 3.14.
- 10.1.4. Subject to Rule 10.1.5 the composition of a disciplinary committee shall remain unaltered for purposes of a single proceeding in respect of any particular lender.
- 10.1.5. Should a vacancy occur on a disciplinary committee, after the committee has commenced with proceedings, the proceedings may continue before the remaining members of such disciplinary committee; provided that it shall not be less than 2 (two) members.
- 10.1.6. The quorum of a disciplinary committee is 2 (two) members, which must include the chairperson.
- 10.1.7. The decision of the chairperson of the disciplinary committee, after consultation with the members of the disciplinary committee, shall constitute the decision of the disciplinary committee.
- 10.1.8. No decision taken by a disciplinary committee or act performed by it hereunder is invalid merely by reason of a vacancy on the committee.
- 10.1.9. A disciplinary committee must meet from time to time and at such places as it may be necessary for it to fulfil its duties and its proceedings may be postponed from time to time.
- 10.1.10. The proceedings before a disciplinary committee must be recorded.
- 10.1.11. Any decision of a disciplinary committee is a decision of the Regulatory Institution and is final, subject to Rule 11 below.

10.2. Preliminary Proceedings

- 10.2.1. Should the prosecuting officer be of the view that there has been a contravention of the Rules that requires disciplinary sanction, the prosecuting officer must notify the lender-
- 10.2.1.1. of the charge against the lender, with reference to the relevant Rule allegedly contravened;
 - 10.2.1.2. of the implications for the lender should the lender be found guilty;
 - 10.2.1.3. of the lender's right, within 21 (twenty one) calendar days as from notification, to make representations to the prosecuting officer in the form of a sworn affidavit setting forth its position, or any comments on the charges, but that the lender is not obliged to do so and that any such affidavit or comments may be used as evidence at the hearing;
 - 10.2.1.4. of the lender's right to be represented by or accompanied by a legal advisor at its own cost; and
 - 10.2.1.5. should the prosecuting officer be of the view that an admission of guilt fine would be appropriate in the circumstances, the prosecuting officer may determine an admission of guilt fine in an amount not exceeding the amount determined by the Regulatory Institution in respect of the category of contravention, and notify the lender of the amount payable and the date before which it is payable;
- and shall provide the lender with a copy of the disciplinary rules and any affidavits contemplated in Rule 10.2.2.
- 10.2.2. The prosecuting officer shall have affidavits prepared setting out the facts pertaining to the charge and details of the nature and results of any investigation.
- 10.2.3. Upon expiry of the time period referred to in Rule 10.2.1.3 and having regard to any representations received from the lender as contemplated in Rule 10.2.1.3, the prosecuting officer shall determine whether the charge discloses a contravention of the Rules which requires disciplinary sanction.

- 10.2.4. The prosecuting officer may at any time withdraw the charge and notify the lender and any complainant accordingly, and may re-open the matter thereafter should evidence become available which may justify such an action.
- 10.2.5. The prosecuting officer shall notify the lender of his or her decision in terms of Rule 10.2.3. If the prosecuting officer has determined that a hearing should be held, and if the relevant admission of guilt fine determined in accordance with Rule 10.2.1.5 has not been paid or the chairperson has determined that the matter shall be referred to a hearing in accordance with Rule 10.2.6.2, the prosecuting officer shall-
- 10.2.5.1. summon the lender to appear before a disciplinary committee at a time and place specified in the summons for the purpose of a hearing;
 - 10.2.5.2. forward a copy of the summons together with a copy of the notice referred to in Rule 10.2.1, any representations by the lender as well as the affidavits contemplated in Rule 10.2.2 to the disciplinary committee.
- 10.2.6. Upon the payment of any admission of guilt fine contemplated in Rule 10.2.1.5, the prosecuting officer shall refer the notice in terms of Rule 10.2.1 together with the lender's completed admission of guilt statement in the form determined by the Regulatory Institution to the chairperson of the disciplinary committee who may-
- 10.2.6.1. confirm the appropriateness of the admission of guilt fine;
 - 10.2.6.2. refer the matter to a hearing by the disciplinary committee where the chairperson deems it appropriate;
 - 10.2.6.3. reduce or set aside the admission of guilt fine;
or
 - 10.2.6.4. request further information from the prosecuting officer or the lender in order to exercise any of the preceding powers.

- 10.2.7. If the chairperson refers the matter for a hearing as contemplated in Rule 10.2.6.2, the prosecuting officer shall notify the lender in accordance with Rule 10.2.5.
- 10.2.8. In the event of a contravention by the lender of Rules 3.10.1 and 0 pertaining to the late submission of documentation, an admission of guilt fine as determined by the Regulatory Institution may summarily be imposed by a designated official of the Regulatory Institution upon evidence of late submission and be notified to the lender. In the event of the lender failing to make payment of the admission of guilt fine as contemplated herein before the due date set by the designated official, the matter shall be referred to the prosecuting officer who shall act in accordance with the provisions of Rule 10.2.1.

10.3. Summons

- 10.3.1. A summons referred to in Rule 10.2.5 shall be -
- 10.3.1.1. signed by the prosecuting officer; and
 - 10.3.1.2. served on the lender in one of the ways contemplated in terms of Rule 3.18.
- 10.3.2. If the lender, after the summons referred to in Rule 10.2.5 has been served on it but before the commencement of the hearing, notifies the prosecuting officer in writing that the lender wishes to plead guilty to the charge as set out in such summons and the chairperson of the disciplinary committee is satisfied that the charge against the lender should be disposed of without the holding of a hearing, the chairperson of the disciplinary committee may-
- 10.3.2.1. find the lender guilty of the charge, and
 - 10.3.2.2. impose a penalty on the lender with due regard to any affidavits in mitigation submitted by the lender, and any recommendation by the prosecuting officer.

10.4. The Hearing

- 10.4.1. If the lender is absent at the hearing or fails to remain present for the course of the hearing or any postponement thereof, the disciplinary committee may proceed in the absence of the lender if the disciplinary committee is satisfied that the lender received proper notice of the time, date and place of the hearing.

- 10.4.2. At the commencement of a hearing the prosecuting officer shall read the charge to the lender and must ask the lender to plead guilty or not guilty thereto.
- 10.4.3. If the lender refuses or fails to plead to the charge at the hearing, it shall be recorded that the lender pleaded not guilty, and thereupon the hearing must be proceeded with as if the lender had in fact pleaded not guilty to the charge.
- 10.4.4. A lender is entitled to the assistance of a legal advisor at a hearing at its own cost.
- 10.4.5. Subject to the provisions of these Rules, evidence at a hearing shall be given orally or be tendered by way of sworn affidavits; provided that no affidavit shall be admitted in evidence if the disciplinary committee is satisfied that there are sufficient grounds why it should not be admitted.
- 10.4.6. Unless an affidavit has been made available to a party before the hearing to consider such affidavit, the affected party may object to the admission thereof on the basis that it did not have an opportunity to consider the affidavit.
- 10.4.7. The chairperson of the disciplinary committee must administer an oath to or accept an affirmation from any person giving evidence.
- 10.4.8. Whenever the lender has pleaded guilty to a charge -
- 10.4.8.1. if the disciplinary committee is satisfied that the lender is guilty of a contravention of the Rules, and the disciplinary committee is satisfied that the charge can be disposed of without hearing evidence, then the disciplinary committee may find the lender guilty of the charge without hearing evidence;
 - 10.4.8.2. the disciplinary committee may, and at the instance of the lender, must, hear or accept further evidence in connection with the charge, irrespective of whether or not the disciplinary committee is satisfied that the lender is guilty of the charge.
- 10.4.9. If the lender has pleaded not guilty to the charge or the disciplinary committee has decided to hear or accept further evidence in connection with the charge in terms of

Rule 10.4.8, the disciplinary committee shall give the prosecutor the opportunity of adducing evidence in support of the charge.

- 10.4.10. After the prosecutor has adduced evidence in support of the charge in terms of Rule 10.4.9, the disciplinary committee must give the lender the opportunity to adduce evidence in its defence against the charge.
- 10.4.11. Witnesses may be cross-examined by the parties and may also be examined by the disciplinary committee.
- 10.4.12. After all the evidence in connection with a charge has been adduced or if the disciplinary committee has decided in terms of Rule 10.4.8 not to hear or accept any further evidence in connection with the charge, the prosecuting officer and the lender may address the disciplinary committee and the disciplinary committee may allow the parties to reply to new issues raised.
- 10.4.13. The disciplinary committee must thereafter consider the evidence submitted at the hearing, in order to come to a decision, subject to Rule 10.1.7 whether the lender should be convicted on the charge.
- 10.4.14. The disciplinary committee must inform the lender and the affected borrower of its decision.
- 10.4.15. The disciplinary committee may at any time, for sufficient cause, adjourn the hearing to a date determined by it.

10.5. The Penalty

- 10.5.1. If a disciplinary committee has in terms of Rule 10.4.13 found the lender guilty of the charge, it must give -
 - 10.5.1.1. the prosecutor the opportunity of proving whether the lender has previously been found guilty by the disciplinary committee;
 - 10.5.1.2. the lender the opportunity of adducing evidence in mitigation; and
 - 10.5.1.3. both the prosecutor and the lender the opportunity of addressing it in connection with the penalty, which the disciplinary committee should impose upon the lender.
- 10.5.2. A certificate signed by the chief executive officer and purporting to be an extract from the minutes of the

proceedings of a disciplinary committee stating the particulars of the charge brought against the lender, the conviction of the lender, and the penalty imposed upon the lender by a disciplinary committee is, upon its mere production by the prosecutor to a disciplinary committee, sufficient proof that the lender had previously been convicted until the lender proves that it had not been so convicted.

- 10.5.3. After the provisions of Rule 10.5.1 have been complied with, a disciplinary committee must, subject to Rule 10.5.4, impose a penalty and inform the lender and the complainant accordingly.
- 10.5.4. The disciplinary committee may impose one or more of the following penalties -
- 10.5.4.1. a warning;
 - 10.5.4.2. a fine not exceeding R10 000.00 (ten thousand rand) per charge;
 - 10.5.4.3. suspension of registration pending compliance with conditions determined by the disciplinary committee;
 - 10.5.4.4. withdrawal of registration;
 - 10.5.4.5. an instruction to reimburse an affected borrower in respect of any amount overcharged.
- 10.5.5. The disciplinary committee may suspend the penalty, or part thereof, on such conditions and for such a period as it may consider appropriate.
- 10.5.6. The disciplinary committee may in addition to any penalty contemplated in Rule 10.5.4 order the lender to pay the costs, or part thereof, of the investigation and the prosecution in the matter.
- 10.5.7. For purposes of Rule 10.5.6, a certificate by the chief executive officer setting out the costs incurred by the Regulatory Institution shall be *prima facie* evidence of such costs. The costs shall be limited to direct expenditure incurred by the Regulatory Institution relating to the matter.

- 10.5.8. The Regulatory Institution shall, upon the conviction of a lender, publish and inform the press, of the conviction and the facts pertaining thereto, the identity of the lender, the relevant contravention and the penalty imposed. The disciplinary committee may on application by the lender or the Regulatory Institution determine that the Regulatory Institution shall not publish or inform the press of such information in such circumstances as the disciplinary committee in its sole discretion deems appropriate.
- 10.5.9. Any fine imposed by a disciplinary committee must be paid within 30 (thirty) business days or within such other period or on such other terms and may be determined by the disciplinary committee on application by the lender.
- 10.5.10. Any person directly affected by the decision of a disciplinary committee may within 30 (thirty) calendar days of notification of the decision request the disciplinary committee in writing to furnish him or her with written reasons for the decision of the disciplinary committee.
- 10.5.11. A request in terms of Rule 10.5.10 must be accompanied by a fee of R50.00 (fifty rand).
- 10.5.12. Any person directly affected by the decision of a disciplinary committee may request a copy of the record of proceedings of the disciplinary committee.
- 10.5.13. A person requesting a copy of the proceedings must contribute to the cost of production of the record in an amount determined by the Regulatory Institution.

10.6. Witnesses and Attendances

- 10.6.1. A disciplinary committee may of its own accord or at the instance of the lender or the prosecutor request any person to be present at an hearing in order to give evidence and to produce at such hearing any book or other document which such person has in his or her possession or custody or under his or her control or which is suspected or believed to be in his or her possession or custody or under his or her control and which has a bearing on the charge which is the subject matter of such hearing.
- 10.6.2. The Regulatory Institution may pay a witness requested to be present at an hearing, such fees as the Regulatory Institution may from time to time determine generally, or

in any particular case, subject to a decision of the disciplinary committee, on the request of the Regulatory Institution, to disallow such payment or any portion thereof, if in the opinion of the disciplinary committee, such witness's evidence or presence at the hearing was unsatisfactory.

10.7. Representation

A lender shall be represented in disciplinary proceedings by the chairperson, managing director, chief executive officer, managing member of the lender, such other person duly authorised by the lender or such other person as may be specified by the Regulatory Institution in any particular case in the notice contemplated in Rule 10.2.1 or the summons in Rule 10.2.5, subject to Rule 10.2.1.4 above.

11. APPEALS

11.1. The Appeals Committee

- 11.1.1. The Regulatory Institution may establish an appeals committee and appoint a chairperson for the committee.
- 11.1.2. The members of the appeals committee shall be independent persons comprising 2 (two) Directors of the Regulatory Institution who are not representing the interests of lenders and 1 (one) person who has been in legal practice for a period of not less than 10 (ten) years.
- 11.1.3. The appeals committee shall consider complaints or appeals in respect of decisions of the chief executive officer or a disciplinary committee of the Regulatory Institution.
- 11.1.4. Rules 10.1.4 to 10.1.9 shall, with the necessary changes required by the context, also apply to the appeals committee.

11.2. Procedures Pertaining to Appeals

- 11.2.1. A person aggrieved by a decision of the chief executive officer or a disciplinary committee, including the Regulatory Institution, may within 45 (forty five) calendar days of being notified of such decision, lodge an appeal with the Regulatory Institution setting out reasons for the appeal and facts and arguments supporting such appeal.

- 11.2.2. The Regulatory Institution upon receiving an appeal shall refer the matter to the appeals committee, together with such arguments as to why the appeal should be upheld or not be upheld.
- 11.2.3. Upon having considered the papers submitted to it, the appeals committee may -
- 11.2.3.1. confirm the decision of the chief executive officer or the decision and/or penalty imposed by a disciplinary committee; or
 - 11.2.3.2. uphold the appeal and substitute the decision appealed against with its own decision and/or penalty.
- 11.2.4. Any person directly affected by the decision of the appeals committee may within 30 (thirty) days of notification of the decision request the committee in writing to furnish him or her with written reasons for the decision of the appeals committee.
- 11.2.5. Rules 10.5.10 to 10.5.13, shall with the necessary changes required by the context, also apply to the appeals committee.
- 11.2.6. The appeals committee may only in exceptional circumstances hear evidence on a matter and to that end it shall have the power to administer the oath and to examine witnesses.

12. CALCULATION OF INTEREST

- 12.1. The Regulatory Institution may from time to time, determine the manner in which the total charge of credit and/or the interest shall be disclosed and calculated for purposes of the Usury Act Exemption.
- 12.2. Without detracting from the provisions of Rule 12.1 above, the annual rate for the total cost of credit in respect of a transaction, shall be calculated on the basis that:
- 12.2.1. interest shall be compounded on a monthly basis; and
 - 12.2.2. interest shall be calculated in arrears.
- 12.3. The provisions of Rule 12.2 above shall not be interpreted to preclude calculation of interest in arrears or compounding on a daily basis, but in determining the total cost of credit the implications of calculation on a basis other than contemplated in

Rule 12.2 shall be taken into account in determining whether there is accurate disclosure and whether the provisions of these rules are complied with or not.

13. TRANSITIONAL PROVISIONS

Anything done or any determination made by the Regulatory Institution in terms of the Rules, as they existed prior to the submission thereof shall be deemed to have been done or determined in terms of these Rules.

APPENDIX 1**REGISTRATION CRITERIA**

1. In order to qualify for registration as a lender with the Regulatory Institution, a lender needs to meet the following criteria:-
 - 1.1. The lender must be in the business of advancing loans falling within the category of money lending transactions exempted under the Usury Act Exemption or the advancing of such loans must be part of its business.
 - 1.2. The lender must commit itself in writing to comply with the Usury Act Exemption and the Rules of the Regulatory Institution.
 - 1.3. The lender needs to be registered as a close corporation, company, co-operative, trust, statutory entity, mutual bank and/or bank.
 - 1.4. The lender needs to have an accredited professional appointed, as at the time of application, to perform agreed upon procedures and to issue a report on factual findings.
 - 1.5. The lender needs to be registered with the South African Revenue Services.
 - 1.6. The lender's directors, trustees or members (in the case of a close corporation), and executive staff, may not have criminal records in respect of theft, fraud, or any other offence involving dishonesty or a conviction indicating propensity to violence or indicative of violent collection practices; provided that the Regulatory Institution may, within its discretion, register a lender where it is satisfied that the registration of such lender will not militate against the objective of developing a clean industry.
 - 1.7. A lender may only apply for registration with the Regulatory Institution on behalf of another legal entity where it is the holding company of such entity.
 - 1.8. The Regulatory Institution may reject an application by a lender if a director, trustee or member, in the case of a close corporation, or the senior management of the lender, has previously held office in a lender de-registered under the Rules or has brought the industry into disrepute or which has acted with disregard for consumer rights generally.

APPENDIX 2

FEE TABLES

Annual Fees – Effective from 1 January 2004	Application fee (new applications) (Excl VAT)	Registration fee (Excl. VAT)	Fee per branch (Excl. VAT)
Category A: Development Lenders			
Section 21 companies and other legal entities that can demonstrate through limitations in their constituting documents that they are not profit distributing	R270	R1 100	R270
Category B: Very Small Lenders			
(a) The lender has 1 branch only, and (b) Annualised gross loan disbursements less than R500 000 (see bullet point 4 under all categories).	R270	R540	R270
Category C: Small and medium sized lenders			
(a) All other lenders, not falling in category A, B or D, <ul style="list-style-type: none"> ▪ With annualised gross loan disbursements greater than R500 000 but less than R15 million, and/or ▪ between 2-24 branches 	R3 200	R4 500	R850
Category D: Transaction based fee			
(a) All other lenders, not falling in category A, B or C, <ul style="list-style-type: none"> ▪ With 25 or more branches, and / or ▪ With annual loan disbursements of more than R15million; (b) The fees will be calculated as indicated in the columns opposite, subject to a minimum fee of R28, 300 per lender. This amount forms part of the registration fees; (c) The allocation of a lender in either of categories C or D will be determined based upon the lender's number of branches and annualised gross loan disbursements, with the annualised gross loan disbursements based upon the returns submitted for the last quarter preceding the date on which the re-registration is due. For new lenders the allocation will be based upon the loan disbursements for the last 3 months prior to the date of application (as certified by the CEO or authorised representative), annualised; (d) The balance of the fees based on disbursements ("Registration fees") is payable quarterly in arrears, based upon the loan disbursements for the quarter as reported in the quarterly statistical returns; (e) Payment to be made 45 days after the last day of the quarter; and (f) Fees for category D lenders are capped at R428 000 (excl VAT)	R3 200	0.01% of the R-value of loans disbursed	R750

Annual Fees – Effective from 1 January 2004	Application fee (new applications) (Excl VAT)	Registration fee (Excl. VAT)	Fee per branch (Excl. VAT)
<p>Please Note: ALL CATEGORIES</p> <ul style="list-style-type: none">▪ The application fee is a once off payment and only applies to new applications;▪ The Registration fee and Branch fees fall due annually;▪ The Application fee, Branch fees and the Minimum fee are payable in advance on date of application for registration and renewal of registration.▪ The reclassification of a Category C lender into Category B lender will be based on the lender having one branch and annualised gross loan disbursements less than R500, 000, with the annualised gross loan disbursements based upon the returns submitted for the last quarter preceding the date on which the re-registration is due. For new lenders the allocation will be based upon the loan disbursements for the last 3 months prior to the date of application (as certified by the CEO or authorised representative), annualised;			