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## GENERAL NOTICES

### NOTICE 1355 OF 1994

#### DEPARTMENT OF TRADE AND INDUSTRY

##### HARMFUL BUSINESS PRACTICES ACT, 1988

I, Trevor Andrew Manuel, Minister of Trade and Industry, do hereby, in terms of section 10 (3) of the Harmful Business Practices Act, 1988 (Act No. 71 of 1988), publish the report of the Business Practices Committee on the result of an investigation made by the Committee pursuant to General Notice 1136 of 1994 as published in *Government Gazette* No. 16026 dated 13 October 1994, as set out in the Schedule.

**T. A. MANUEL,**

Minister of Trade and Industry.

## ALGEMENE KENNISGEWINGS

### KENNISGEWING 1355 VAN 1994

#### DEPARTEMENT VAN HANDEL EN NYWERHEID

##### WET OP SKADELIKE SAKEPRAKTYKE, 1988

Ek, Trevor Andrew Manuel, Minister van Handel en Nywerheid, publiseer hiermee, kragtens artikel 10 (3) van die Wet op Skadelike Sakepraktyke, 1988 (Wet No. 71 van 1988), die verslag van die Sakepraktyke-komitee oor die uitslag van die ondersoek deur die Komitee gedoen kragtens Algemene Kennisgewing 1136 van 1994 soos gepubliseer in *Staatskoerant* No. 16026, gedateer 13 Oktober 1994, soos in die Bylae uiteengesit.

**T. A. MANUEL,**

Minister van Handel en Nywerheid.

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**SCHEDULE • BYLAE**

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**BUSINESS PRACTICES COMMITTEE**

REPORT IN TERMS OF SECTION 10 (1) OF THE HARMFUL BUSINESS  
PRACTICES ACT, 1988 (ACT No. 71 OF 1988)

**Report No. 40****THE SA UNLISTED SECURITIES MARKET EXCHANGE (PTY) LIMITED**

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**1. Introduction**

The Business Practices Committee (the Committee) operates in terms of section 2 of the Harmful Business Practices Act (Act No. 71 of 1988, "the Act"). The purpose of the Act is to prohibit or control harmful business practices. The latter is defined as any business practice which, directly or indirectly, has or is likely to have the effect of harming the relations between businesses and consumers, unreasonably prejudicing any consumer or deceiving any consumer. The *raison d'être* of the Committee, and the Act for that matter, is thus the interest of the consumer and specifically the consumer who is or is likely to be unreasonably prejudiced or deceived.

**2. The complaint**

The business practices of The SA Unlisted Securities Market Exchange (Pty) Limited (86/03062/07) (USM) trading as USM Investments came to the attention of the Committee during February 1993 when it received a complaint from an elderly lady (investor) who was unhappy because USM did not answer her letters.

**3. USM****3.1 The directors**

The directors of USM are David Richard Bell (Bell), Brian Lawrence Capper (Capper), Stephen Justin Conway (Conway) and John Dawson White (White). Bell holds 94 per cent of USM's shares, Conway owns four per cent and Capper the remaining two per cent. Bell, who took over control of USM during 1990, is the Managing Director. Conway is the National Sales Director, Capper the Financial Accountant and White the Projects Manager.

**3.2 USM's *modus operandi***

USM acts primarily as a broker. USM's *modus operandi* is to approach or to be approached by the owners of a close corporation or a proprietary company (the target company) and enter into an agreement with the owners to:

- (a) convert the close corporation or proprietary company into a public company;
- (b) raise additional capital by appointing consultants (mostly insurance consultants who have garnered a client base and work on a commission basis only) to approach clients (investors) with a view to privately placing the target company's shares; and
- (c) apply for a listing of those shares. Musica Limited (in 1988) and Pointer Fashion International Limited (in 1986) were assisted by USM in obtaining JSE listings. Musica was delisted in 1992.

After the target company has been converted to a public company, the authorised capital is, by special resolution, increased to between 15 and 30 million shares with a par value of 0,01 cent. At this stage USM, its directors and the directors of the target companies take up approximately 30 per cent of the authorized capital of the target company. As soon as this accomplished, all the authorized par value shares are, by special resolution, converted to shares of no par value. Target companies are:

Almar Holdings Ltd (88/04485/06) (Almar),  
Aludie Ltd (82/09023/06) (Aludie),

Dusi Holdings Ltd (92/01857/06) (Dusi),  
General Housing Ltd (86/03047/06) (General Housing),  
Integrated Resources Ltd (86/01469/06) (Integrated),  
Intercomp Ltd (90/03679/06) (Intercomp),  
Ionex Electronics Ltd (89/05948/06) (Ionex),  
Karkloof Milling Ltd (91/00669/06) (Karkloof), and  
Zandills Shoe Manufacturers Ltd (91/06389/06) (Zandills).

Cedarwood Properties Ltd (92/03393/06) (Cedarwood), although not a target company, also features in this report.

According to Bell, the original owners of the target companies hold approximately 52 per cent of the shares in each, USM holds between  $4\frac{1}{2}$  per cent and 7 per cent and the clients of USM (the investors) the remainder. Bell is also the beneficial owner of D'urban Registrars (Pty) Ltd (D'urban). The latter acts, for a fee, as the share transfer secretary of Almar, Aludie, Karkloof and Zandills. D'urban shares USM's offices and the personnel of USM are also the personnel of D'urban.

### 3.3 USM's Share application form

Investors sign a share application form. The following sentence appears between two parallel lines: "Application to purchase shares to be allotted in **COMPANY OFFERING THE SHARES LIMITED** subject to the terms and conditions of the offer set out in the Private Placement Memorandum". This sentence and the Private Placement Memorandum will be discussed in section 5.1 (a) of the report.

The share application form provides space for information regarding the personal particulars of the prospective shareholder. It also reflects, inter alia, the following conditions:

"I/We, the undersigned, confirm that I/We have full legal capacity to contract and hereby irrevocably apply for and request you to accept my/our offer for the purchase, subject to the Memorandum and Articles of Association of the Company and upon the terms and conditions set out in this Private Placing Memorandum, of the undermentioned number of shares at xc per share.

I/We enclose a crossed cheque/cash/bankers draft in favour of **(the company offering the shares)** for the amount due in terms of this application.

I/We understand that the above monies will be invested for a minimum period of three years or until such time as the company achieves a stock market listing."

The shares in the target companies are sold by USM brokers in terms of the various Private Placing Memoranda (drawn up by USM) already referred to in this document. The brokers are not employed by USM. They worked on a straight commission basis of 10 per cent of the funds raised. This was later changed to  $8\frac{1}{2}$  per cent.

### 3.4 USM's "Income Provider Plan"

In certain instances an investor may require a regular income after investing in the shares of a target company. USM devised a scheme whereby the investor may instruct USM to sell shares with a certain value each month for a certain period. The investor, in his instruction, states that he is aware that USM does not undertake to purchase any of the shares from him at a future date. The scheme is called an "Income Provider Plan". The following are examples.

(a) In a letter dated 7 October 1991 USM wrote to a client:

"We confirm receiving the sum of R11 250.00 (Eleven Thousand Two Hundred and Fifty Rand) which has been invested on your behalf in a INCOME PROVIDER PLAN.

The monies have been invested in order to provide you with a monthly income of R625.00 (Six Hundred and Twenty Five Rand) being the systematic withdrawal of funds over a 24 (Twenty Four) month period, i.e. a total return on your investment of R15 000.00 (Fifteen Thousand Rand), over this period."



- (2) In another letter dated 11 October 1991 USM wrote to a client:

"We confirm receiving the sum of R39 210.00 (Thirty Nine Thousand Two Hundred and Ten Rand) which has been invested on your behalf in an Income Provider Plan.

As discussed with you, the above monies will be invested in order to provide you with a monthly income of R2 178.33 (Two Thousand One Hundred and Seventy Eight Rand and Thirty Three Cents), being the systematic withdrawal of funds over a 24 (Twenty Four) month period, i.e. a total return on your investment of R52 279.92 (Fifty Two Thousand Two Hundred and Seventy Five Rand and Ninety Two Cents) over this period."

The effective interest in both instances is 29,305% per annum.

### 3.5 The "re-trading of shares"

The "re-trading of shares" (re-trades) at USM is an important concept. The re-trading of shares took place when, for example,

- (a) USM sold the shares it or any other parties took up in the target companies (at 0,01 cent each) to USM's clients (before the par value shares were converted to shares of no par value),
- (b) USM bought back shares that its clients held in the target companies, and
- (c) USM sold the shares bought in (b) above to other clients.

On 18 February 1993 a subcommittee of the Committee decided to institute a preliminary investigation in terms of section 4 (1) (c) of the Act into the business practice of USM and any director, member, partner (as applicable), agent and/or employee of the aforementioned.

## 4. Section 4 (1) (c) and 8 (1) (a) investigations

A section 4 (1) (c) investigation enables the Committee to make such preliminary investigation as it may consider necessary into, or confer with any interested party in connection with, any harmful business practice which allegedly exists or may come into existence. Notice of section 4 (1) (c) investigations is not published in the *Government Gazette* as opposed to section 8 (1) (a) investigations.

The purpose of section 4 (1) (c) investigations is to enable the Committee to make a more informed decision as to whether a section 8 (1) (a) investigation is called for. The Minister of Trade and Industry is not empowered to make any decisions on the strength of a section 4 (1) (c) investigation. He may do so in terms of a section 8 investigation.

After various correspondence between the Committee and USM, officials visited USM's offices on 13 and 14 April 1994. Due to severe infrastructural constraints, the investigation at USM's offices was only resumed on 28 September 1994, 4 October to 6 October 1994 and 1 November 1994. On 29 September 1994 a subcommittee of the Committee decided that a section 8 (1) (a) investigation into the business practices of USM was called for should the investigation from 4 to 6 October 1994 point to its desirability. The section 8 (1) (a) investigation was, in terms of section 8 (4) of the Act, announced in General Notice 1136 of 1994 which appeared in *Government Gazette* No. 16026 of 13 October 1994.

The findings and conclusions are based on the information and documentation that were made available to the investigating officials. Primarily this consisted of a number of meetings with Bell and Capper and documentation supplied by them. The harmful business practices are indicated in *italics*.

## 5. The investigation

### 5.1 Offering of shares

#### (a) The Private Placement Memoranda

Shares were sold without an accompanying prospectus prepared in terms of the Company's Act. Bell and Capper rationalised this approach on the basis that shares were only offered to existing clientele and/or referrals from their existing clientele.



According to Capper and Bell "Private Placing Memoranda" (memoranda) were supplied to each prospective purchaser. The memoranda were brief documents containing the following type of information:

The history and nature of the business;

Particulars of the offer. In most cases the reasons for the offer related to the provision of funds to be injected into the operation;

The offer itself, such as the number of shares that were placed and the issue price per share;

The opening and closing dates of the offer;

The application form;

Share capital;

Options or preferential rights in respect of shares;

Management; and

General Information. This section set out the issuing house, consultants involved, auditors, attorneys, registered office, transfer secretary and principal bankers. The memoranda contained no information on the financial position of the target companies.

The investigating officials were supplied with memoranda for the following companies:

Company (Shares)	Private placement memoranda and price range		
	No.	First	Last
Karkloof 5 199 500	11	1/06/91 40 cents	28/2/93 100 cents
Almar 2 589 800	9	27/09/92 50 cents	16/05/94 90 cents
Aludie 1 027 100	7	11/12/91 70 cents	16/11/93 110 cents
Zandills 4 383 000	8	24/01/92 70 cents	31/08/94 105 cents

Funds were also raised for Cedarwood and Dusi. No memoranda were issued for the funds raised for these companies.

The officials could not be supplied with any memoranda for Intercomp, General Housing, Integrated and Ionex. The reasons advanced were that these four companies raised funds in the period that a Mr X had "control" of the business. The officials were informed by Capper that no funds were raised in respect of these companies during the period in which Bell had "control" of USM.

In an interview with Conway and one of his senior sales managers, Mr Y, the officials were informed that they (USM) seldom supplied a prospective purchaser with a Private Placing Memorandum. *This action is contrary to the words "... subject to ... and upon the terms and conditions set out in this Private Placing Memorandum ..."* of the first condition in the Share Application form. *The omission could have had, directly or indirectly, the effect of prejudicing or deceiving investors and can be regarded as a harmful business practice.* The harmful business practice was exacerbated during the raising of funds for Cedarwood and Dusi. *No memoranda were issued in respect of the funds raised for these companies, yet the share application form implied they were available.*

## (b) The allotment of shares

As stated previously, the following sentence appears between the first two parallel lines on the share application form:

"Application to purchase shares to be allotted in **COMPANY OFFERING THE SHARES LIMITED** subject to the terms and conditions of the offer set out in the Private Placement Memorandum".

Two issues are discussed regarding the allotment of shares. The first is the question of re-trades or new shares and secondly, the relationship between General Housing, Dusi and Cedarwood.

**(i) Re-trades or new shares?**

The words "... to be allotted ..." in the sentence "Application to purchase shares to be allotted in COMPANY OFFERING THE SHARES LIMITED subject to the terms and conditions of the offer set out in the Private Placement Memorandum" imply just that. A reasonable deduction is that "new" shares in the particular company were to be allotted, apportioned or assigned to the buyer. This deduction is justified and is strengthened by the fact that in most instances the reasons for the offer (in the memoranda) related to the provision of funds to be injected into the different companies.

The officials conducting the investigation questioned Conway and Mr Y as to whether prospective purchasers were informed whether shares were new issues or secondary market shares/re-trades. They stated that they made no specific representations in this regard and in their view, it did not make that much difference. This implies that USM did not disclose whether it was acting as principal or as agent. *Clearly investors have the right to know whether their funds are channelled into the company or into somebody's pocket. If the latter was applicable, it is doubtful whether the investors would have bought the shares. The result of this indifference was that it could have had, directly or indirectly, the effect of prejudicing or deceiving investors and can be regarded as a harmful business practice.* In an agreement dated 22 April 1993 between the financial director of Zandills, and USM, the latter agreed to sell 300 000 of the director's shares in Zandills for his personal needs. The buyers of these shares were not informed of this agreement.

**(ii) General Housing, Dusi and Cedarwood**

The relationship between USM and General Housing, Dusi and Cedarwood appears to be more than that of agent and principal. There is definite evidence to suggest that USM is managing and controlling these three operations.

The officials were informed by Capper that USM took over management control of General Housing at the end of 1991 as the company was not performing to expectations. He also told the officials that the ultimate management control lies with Bell. He further informed the officials that the directors of the company, Mr X and Mr R have literally no involvement with the company. Bell appointed the general manager of General Housing although he was not a director of the company.

In respect of General Housing the officials were informed that no new funds were raised for this business since approximately 1989 [keep in mind that "... at the end of 1991 ... (General Housing) was not performing to expectations"]. Capper informed the officials that the only movement in these shares were in the secondary re-trade market. However, the officials came across a number of examples of recent application forms in the name of General Housing which referred to "... the offer set out in this Private Placement Memorandum".

The buyers were under the impression that they bought new shares in General Housing. *The investors were misled and a harmful business practice conducted. USM (now carrying two hats, one being effectively General Housing's principal and the other that of the impartial broker) knew that the company was not performing as expected. Yet it took money from investors. This money did not flow to the company and had it done so it could have improved its performance.*

Dusi's financial statements for the year ended February 1993 were available. The auditors disclaimed an opinion and the balance sheet reflect a net worth of R680 000. The assets of approximately R1 million are made up by machinery (R700 000 and land and buildings R300 000). Dusi's loss for the year was R320 000. White is Dusi's project manager.

Cedarwood's directors are Bell and Capper. According to Capper, Cedarwood raised approximately R2 million through the issue of debentures. The company has a net worth of R25 000. A major asset of Cedarwood is R681 000 owed by USM. The company is apparently experiencing liquidity problems. There is evidence to suggest, and this was confirmed by Capper, that USM used some of the funds raised by Cedarwood to re-trade shares. *This could have had the effect of prejudicing Cedarwood's debenture holders.* The evidence also suggests that the funds raised by Cedarwood were deposited in USM's bank account. *The commingling of the funds of Cedarwood and USM could also have had the effect of prejudicing Cedarwood's debenture holders.*

**(c) The cheque in favour of the company offering the shares**

It was stated earlier in this report that the share application form contained a condition that—

“I/We enclose a crossed cheque/cash/bankers draft in favour of **(the company offering the shares)** for the amount due in terms of this application.

It appeared that bank accounts were opened in the names of each of the companies (offering the shares) and that Capper and Bell were mandated signatories. It could not be confirmed whether they acted with the consent and authority of the executive directors of these companies.

**(d) The investment for a minimum period**

As was stated earlier in this report, one of the conditions on the share application form was:

“I/We understand that the above monies will be invested for a minimum period of three years or until such time as the company achieves a stock market listing.”

This statement is meaningless. It implies that the monies will be invested for a minimum period of three years. Should the company, however, achieve a listing in 50 or x years time the monies will be invested for a minimum period of 50 or x years. The period of three years had some time ago been changed to four years. This change did not alter the effect of the condition.

The question that begs to be answered is: What was the intention of this seemingly meaningless condition?

Bell and Capper maintained, correctly, that there was no legal obligation on the part of USM to buy back or re-trade the shares at the end of a period of three to four years. Their view was that they had created a secondary market in which the shares could be traded. Their objective was to facilitate the buying and selling of shares in this market. They also informed the officials that while there was no legal obligation on USM's part to buy back or re-traded clients shares, they felt that they had a moral obligation in this regard. The officials have been unable to ascertain whether the moral obligation was accounted for in the financial statements of USM.

Many investors did in fact get their money (plus a handsome return) refunded after three years. The “money plus interest back after three years” philosophy was promoted by USM, Bell and the brokers, regardless of the moral and legal issues involved. This philosophy is strengthened by the following undated document issued by Bell and Conway:

**“GROWTH PROSPECTS**

USM Investments are Investment Brokers who specialise in obtaining above average capital growth. Our expertise is investing in established, well managed registered Public Companies. These companies are achieving above average growth in their particular fields and we offer our clients a minimum of 15–22% capital growth per annum.

A R10 000.00 investment into our Private Placement Portfolio would generate a minimum return of R18 000.00 over a four (Committee's underlining) year period. As you can see this represents a very competitive rate in the market place, one which we have managed to maintain since our inception.

Yours faithfully

DAVE BELL  
Managing Director

STEPHEN CONWAY  
National Sales Director”.

The following are further examples to demonstrate the “money plus interest back after three years” approach:

**A. UNDATED DOCUMENT ISSUED BY USM****“REASONS WHY OUR PRODUCT IS SAFE**

1. We have a Clean Bill of Health from the Reserve Bank—Pretoria.
2. The concept used is a proven method used currently by Banks, Building Societies and Insurance Companies and which has been used for many years.



3. Companies to be listed are first audited before accepted by ourselves for listing.
4. Companies to be listed have a minimum five year track record.
5. The structure of the management team has not changed over the last five years.
6. Companies to be listed possess a minimum of R1 500 000,00 fixed assets.
7. The product or service of each company is highly marketable.
8. Companies are producing a net profit of a minimum of R400 000, 00 per annum (approximately R33 000,00 per month).
9. We invest in each Company between  $\frac{1}{4}$  and  $\frac{1}{2}$  million rand.
10. We have a seat on the Board of Directors of each Company (representing ourselves and investors) and attend monthly meetings.
11. Each company is closely monitored by the Registrar of Companies—Pretoria who determines certain requirements.
12. The value of the unbonded asset base is in excess of the amount collected by investors.
13. Our goal is to list each company within three years.
14. If not listed within three years we shall re-trade shares". (Committee's underlining).

Although the emphasis is on the three years period, *a number of points in this document was misleading and constitute harmful business practices. Depending on the underlying assumptions, points 3, 7, 9, 10 and 13 could be, but are not necessarily, true.*

(B) Bell signed a letter dated 27 April 1994 to a client which contained the following sentence:

"USM investments are investment brokers who specialise in obtaining above average capital growth. Our expertise is investing in established, well managed registered public companies. These companies are achieving tremendous growth in their particular fields and we offer our clients a minimum of 15–22% capital growth per annum. . . . A R30 000 investment into our three year (Committee's underlining) money management portfolio would generate a minimum return of R54 000".

(C) A former USM broker wrote the following to the Committee:

"I became an agent and duly attended meetings which took place on Fridays. We were encouraged and motivated by David Bell, Stephen Conway and agents who had achieved good results the previous week or month. . . . Information was passed on to us as new developments took place, reinforcement of the product we were selling i.e. profit that could be obtained by potential investors, the three year time that the investment was "blocked". It was made very clear that once in the scheme the investor was locked in for three years minimum with the option at the end of three years to re-trade or withdraw . . ." (Committee's underlining)

(D) In a letter to a shareholder dated 31 March 1993 (signed by Bell) USM *inter alia* states:

"However, if the Company has not listed after the three year (Committee's underlining) period and you require the proceeds of your investment, we will honour your request and re-trade your shares".

There is no reference to moral obligations or the legal issues involved. Bell states that after three years the shares would be re-traded. In the same letter the shareholder is given the following values of the shares in the different companies (the net asset values, calculated by the Committee, are indicated in brackets):

General Housing .....	R1,25 (-6,6 cents on 28 February 1991)
Aludie .....	R1,10 (17,9 cents on 28 February 1993)
Zandills .....	R1,00 (24 cents on 31 December 1993)
Karkloof Milling .....	R1,00 (9,9 cents on 28 February 1993)

(E) Conway, the National Sales Director, and Mr Y also stated that they gave their prospective purchasers a verbal undertaking that the shares would be re-traded after a prescribed period of time. This period was usually three years, notwithstanding the fact that there was no such undertaking in the share application form.

(F) In a letter dated 15 April 1994 a client wrote to Conway:

"Please confirm that you will redeem our investment in cash by selling the shares by 4.11.1994".

Conway replied to this letter on 7 May 1993. He wrote:

"(1) We confirm that you will redeem your investment in cash at the end of the three year investment period.

(2) As the investment is for a period of three years, we are unable to re-trade your shares before the due date". (Committee's underlining).

*Hundreds of consumers (investors) were misled into investing on the basis that they would receive their money, plus interest, back after three years. On the one hand Bell claimed that he had no legal obligation to buy back his clients' shares and on the other hand he vigorously promoted a company policy claiming to buy back investments in shares at an above-average return. This is a harmful business practice.*

#### (d) The financial position and performance of the companies

The following information was supplied by USM in respect of each of the companies.

##### 5.2.1 Zandills

The annual financial statements for the year ended 31 December 1991 (figures in brackets are those for the 1992 financial year) reflect a turnover of R8.5 million (R10,8 million), a loss before taxation of R525 000 (an income before taxation of R82 000) and a shareholders' interest of R512 000 which includes a shareholder's loan of R460 000 (R2.02 million, the bulk of which consisted of the stated capital account).

No statutory accounts have been finalised subsequent to 31 December 1992 and the only other financial information in the possession of the USM directors is a set of draft management accounts apparently prepared by the financial director of Zandills. For the year ended 31 December 1993 this document reflected a turnover of R14.96 million, an operating income before taxation of R540 000 and a total shareholders' interest of R3.3 million of which R3,1 million is represented by the stated capital account.

According to Zandills' Eighth Private Placing Memorandum, with a closing date of 31 August 1994, the total number of issued ordinary shares was 14 133 000. The issue referred to in the memorandum of 398 600 shares was to take place at 105 cents per share. From these figures the capitalised market value of Zandills should be approximately R14.8 million. In other words, if all 14 133 000 shares were sold at 105 cents per share, the company would have collected R14.8 million. As mentioned in the preceding paragraph, the total shareholders' interest was R3.3 million. The capitalised market value of Zandills is thus nearly 4½ times the total shareholders' interest.

##### 5.2.2 Karkloof

The annual financial statements for 28 February 1991 are qualified on the going concern basis. They reflect a turnover of R4.9 million (R5.8 million), a net loss before extraordinary items of R962 000 (R899 000) and a shareholders' interest of R802 000 (R1.4 million, after taking account of share capital of R2.3 million) after taking account of a shareholders' loan of R1.78 million (approximately R1 million). The figures in brackets are those for the 1992 financial year.

Financial statements were prepared for the year ending 28 February 1993. Highlights reflected in these annual financial statements include a turnover of R7.5 million, a net profit for the year of R72 000 and a shareholders' interest of R2 million after taking account of stated capital of R2.8 million and shareholders' loans of R1 million. According to Capper, no financial information has been made available since the issue of the said financial statements.

According to Karkloof's Eleventh Private Placing Memorandum (prepared by USM), which has a closing date of 28 February 1993, the total number of issued ordinary shares was 19 199 500. The issue of 232 800 shares referred to in the memorandum was to take place at R1 per share. From these figures the capitalised market value of this company should approximate an amount in excess of R19 million. This is 9½ times the total shareholders' interest.

### 5.2.3 Almar

Annual financial statements dated 30 September 1992 reflected an income of R256 000 received from an associated company and a shareholders' interest of R2,5 million. Highlights of the financial statements as at 30 September 1993 included a turnover of R38 million, which was inclusive of the associated company's turnover, and a net income after taxation of R361 000. Shareholders' funds amounted to R5,1 million, inclusive of loans of R875 000, a minority shareholders' interest of R1,4 million, and a non-distributable reserve of R1,7 million. According to Capper, USM has not been supplied with any further financial information subsequent to that mentioned above.

According to Almar's Tenth Private Placing Memorandum, which had a closing date of 26 August 1994, there were 11 295 200 shares in issue. The issue of 473 000 shares referred to in the memorandum was to take place at 95 cents per share. From these figures, the capitalised value of this company should approximate R10,7 million. This is nearly 2,1 times the total shareholders' interest.

### 5.2.4 Aludie

Annual financial statements were prepared at 29 February 1992. These accounts reflect a turnover of R3,2 million (R3,9 million), a net income for the year of R125 000 (R840 000) and a shareholders' equity of R1,7 million which includes a non-distributable reserve of R972 000 (R2,5 million, which includes a non-distributable reserve of R921 000 and R769 000 share capital). The figures in brackets are those for the 1993 financial year.

The financial statements as at 28 February 1994 reflect a turnover of R4,2 million, a net income for the year of R548 000 and shareholders' funds of R2,8 million inclusive of an NDR of R880 000 and share capital of R820 000.

According to Aludie's Seventh Private Placing Memorandum which closed on 16 November 1993, the number of issued shares was 14 361 800. The issue of 21 908 shares referred to in the memorandum was to take place at 110 cents per share. Utilising these figures the capitalised market value of this company should approximate R15,8 million. This is just more than 5,6 times the total shareholders' interest.

### 5.2.5 Intercomp

USM was not in possession of any recent financial statements prepared in respect of this company. The only documentation in his possession was a set of forecasted trading results for the six months ended 31 October 1993. According to Capper he has had no financial statements for a period of at least three years.

### 5.2.6 Ionex

The last set of available accounts in Capper's possession was dated 29 February 1992. The auditors, Deloitte & Touche, have not expressed an opinion on these financial statements. Bell is shown as a director of this company and was appointed on the 28 February 1991. Highlights of these financial statements include a turnover of R835 000, a loss for the year of R340 000 and a negative shareholders' interest of R188 000.

USM supplied the officials with a set of financial statements for a company called B-Secure Electronics (Pty) Ltd. These financial statements are for the period 28 February 1993. According to Capper this is the single major asset of Ionex Electronics Limited. Key numbers reflected in this set of financial statements, which is a set of draft management accounts, show sales as R1,13 million, a gross income of R139 000, and a net profit prior to taxation of R88 000.



### 5.2.7 Integrated

A set of unaudited draft financial statements was prepared as at 29 February 1992. These reflect a turnover of R1 million and a net income for the year of R100 048. Shareholders' interest is shown as R1,8 million of which R1,7 million is represented by share capital. Aside of this information, USM has no other information on the company in its possession.

### 5.2.8 General Housing

USM provided a set of financial statements dated 29 February 1992 which are qualified by the auditors. It was interesting to note that the Report of the Directors was signed by Mr X and Mr R [see also section 5 (1) (b) (ii) of this report]. The Report of the Directors was dated 1 August 1994 and as was stated above, it was the officials understanding that neither of these gentlemen played a role in the management of this concern for a considerable period of time.

The turnover for the year ended 29 February 1992 totalled R1,14 million and led to a net loss for the year of R1,6 million. The shareholders' deficit as at 29 February 1992 equalled R2,46 million. Long-term liabilities totalled R3,5 million and is made up primarily of amounts due to Integrated (R1,6 million) and USM (R1,4 million).

A set of financial statements was also prepared as at 31 December 1992. These accounts were clearly marked unaudited drafts and were for discussion purposes only. Turnover for the period ended 31 December 1992 was R2,2 million. The loss for the year was R380 000. The balance sheet reflects a shareholders' deficit of R2,8 million and long-term liabilities of R3,8 million.

Capper supplied the officials with a balance sheet prepared as at 30 June 1994. Highlights of this balance sheet include a shareholders' deficit of R2,5 million, long term liabilities of R3,4 million and net current liabilities of R349 000. The officials were also supplied with an income statement which appears to cover the period January 1994 to June 1994. Turnover is reflected at R1,7 million giving rise to a net loss of R245 000.

A scrutiny of certain customer files revealed that General Housing shares are trading at a price of approximately 125 cents per share. On the basis that there are 14 814 200 shares in issue, this would give a value to the company of R1,5 million. This is 5,6 times the total shareholders' deficit.

### 5.2.9 USM

#### (i) The year ended 31 December 1992

These financial statements were qualified by the auditors in respect of certain possible deposit-taking activities which may not have been in conformity with the Reserve Bank guidelines.

The turnover of USM for the period ended 31 December 1992 was R3 million made up of commissions received, sales of merchandise and profit on disposal of investments of approximately R2,8 million. Profit after taxation approximated R24 000. Shareholders' funds equalled R505 000 of which R461 000 was represented by shareholders' loans.

Current assets approximated R7,09 million and current liabilities R7,08 million leaving a net position of approximately R15 000. Some difficulty was experienced in obtaining details supporting the major assets of USM being stocks and share options, accounts receivable and loans receivable. Similar difficulties were also experienced in obtaining a breakdown of the accounts payable which approximated almost R7 million.

In general, the questions posed to Capper concerned:

The classification of the assets and liabilities as "current";

The carrying value of the assets and support advanced in respect thereof;

The very nature of the substantial short term liability of R7 million.

#### (ii) The year ended 31 December 1993

Capper also supplied the officials with a set of management accounts as at 31 December 1993. Highlights of these financials are a turnover of R4,3 million resulting in a net income for the year prior to taxation of R124 000. Shareholders' funds are shown at R178 000 and net current assets approximate R19 000. Once again current assets and current liabilities approximate R5,4 million.

The queries raised in respect of the 1992 year end apply once again. The officials requested Capper to supply them with detailed supporting analyses in respect of these numbers, but as yet nothing has been forthcoming. Capper informed the officials that he had prepared no financial statements since 31 December 1993. The officials questioned Capper on the current financial position and the solvency of USM and he informed them that to the best of his knowledge USM was still solvent.

### 5.2.10 General observations

In a letter dated 27 April 1993 to an investor signed by a broker and co-signed by Conway it is *inter alia* stated:

"USM Investments are investment brokers who specialise in obtaining above average capital growth. Our expertise is investing in established, well managed registered public companies. These companies are achieving tremendous growth in their particular fields and we offer our clients a minimum of 15-22% capital growth per annum".

A cursory investigation into the financial position and performance of the target companies did not confirm the sentiments expressed. None achieved a "tremendous" growth rate in the sense that the investors' capital had grown. On the contrary. *Investors were misled regarding the growth of the target companies. This is a harmful business practice.*

The capitalized market values of Karkloof, Zandills, General Housing, Aludie and to a lesser extent Almar do not appear to be justified when viewed against the financial information made available to us.

In respect of Karkloof, Zandills, Almar and Aludie a substantial number of shares were allocated to USM. These allocations were made in terms of agreements entered into with the respective shareholders and vendors. The prices at which the shares were allocated to USM appear to be substantially less than those reflected in the respective memoranda. It is the investigating officials' understanding that these shares or the vast proportion of this were sold by USM brokers in terms of the various memoranda already referred to in this document.

Bell and Capper continuously differentiated between the business conducted when USM was under the control of Mr X as opposed to the business conducted under the control of Bell. The officials understood that General Housing, Integrated, Ionex and Intercomp relate to the period when Mr X controlled USM. Almar, Aludie, Karkloof and Zandills relate to the period under which USM has been under the control of Bell. The rationale behind this approach appeared to be that the latter businesses are performing well, while the former operations were problematic.

The investigations revealed that certain of the vendors disposed of a portion of their personal shareholdings. USM appear to have acted as agents for these principals and this fact has not been disclosed to the purchasers of these shares.

One of the vendors and Managing Director of Karkloof was forced to transfer 700 000 shares to USM for no consideration. Capper informed the officials that the reason behind this was that Karkloof was not performing and this was a penalty. There appears to be no agreement supporting this transaction. According to Capper, the vendor was aware that these shares were going to be sold to fund re-trades.

The investigation did not include an examination of the awareness and involvement of all target companies' directors and professional advisors pertaining to the raising of funds or the selling of shares.

## 6. USM's valuations of the shares in the target companies

USM regularly sent out letters to their clients informing them of the "values of their investments". A few examples will suffice:

In a letter (signed by Bell) dated 31 March 1993 to a shareholder USM *inter alia* writes:

"We take pleasure in detailing below the current value of your existing portfolio.

Date of purchase	Company	No. of shares	Original investment	Current value
30/09/91 .....	Integrated Resources .....	1 800	R1 980	R1 980
30/09/91 .....	Zandills .....	11 000	R7 700	R11 000
30/09/91 .....	Aludie .....	18 300	R15 555	R20 130
30/09/91 .....	General Housing .....	1 700	R1 955	R2 125
30/09/91 .....	Karkloof Milling .....	7 735	R7 735	R9 100
Growth on investment to date = 26,94%			R34 925	R44 335."

Bell himself tells this client that the growth on his investment was nearly 27 per cent, whereas none of these companies achieved such a growth rate. *This investor was misled, in this case by Bell himself.*

In a letter with the heading INVESTMENT UPDATE dated 9 May 1994 to a shareholder USM states:

"We have pleasure in advising that the value of your investment of R29 950 is now R36 539".

The investment of R29 950 (R9 000 in Karkloof, R9 000 in Zandhills, R5 950 in Almar and R6 000 in General Housing) was made on 5 May 1993. The letter implies that the capital growth was exactly 22 per cent  $[(36\ 539 - 29\ 950) \div 29\ 950 \times 100]$ . The fact was that none of these companies achieved such a growth rate. *This investor was misled.*

A firm of attorneys, executors of the estate of a deceased shareholder in the target companies, wrote the following to the Committee:

"After considerable difficulty we were able to obtain the names and addresses of the auditors of the various companies in which Mr . . . held shares. The auditors' valuations were in stark contrast to the rosy estimates furnished by USM Investments. We annex hereto marked "D" a table showing the price paid by Mr . . . , the estimated value as submitted by USM Investments, the auditors' valuation and the estimated listing date on the Johannesburg Stock Exchange".

Company	No. of shares	Price paid on 2 Nov. 92 (R)	Estimated evaluation as submitted by USM Inv. 6 Dec 1993 (R)	Auditors evaluation (R)
General Housing.....	3 100	3 565	3 875	1
Zandhills.....	8 000	7 200	8 400	1 160
Almar.....	2 700	1 755	2 430	1 890
Aludie.....	3 400	3 740	3 740	1 870
Karkloof.....	2 000	1 800	2 200	140
Total.....		18 060	20 645	5 061

There is a discrepancy in USM's valuation of the shares in the target companies and that of the auditors of the target companies, with USM always and unsubstantiably optimistic. The differences in the valuations are as follows (the valuations of the target companies' auditors are taken as divider): General Housing, a staggering 387 400 per cent; Zandhills 624,1 per cent; Almar 28,6 per cent; Aludie 100 per cent, and Karkloof 1 471,4 per cent. The aggregate difference is 307,9 per cent.

A casual scrutiny of a certain customer's file revealed how share "prices" had been determined when they were re-traded. The investor bought the following shares on 8 November 1990 and sold them to USM during the first week of August 1994 (more or less four years or 48 months):

Number	Company	Bought at	RAND	
			Sold at	Profit
9 200	Intercomp	5 980	10 333,52	4 353,52
13 500	Karkloof	6 075	10 497,69	4 422,69
3 500	Integrated	2 975	5 140,84	2 165,84

The file shows that the investor's selling price per share was calculated to six decimal places, for example, Intercomp shares were sold by the investor (bought by USM) at R1,123208 each. This seemed odd. The share prices were not determined by demand and supply. They were contrived by Bell. Applying the formula: Interest (or profit) = [Capital (Bought at) times the number of months times the interest rate] divided by [12 times 100], where the number of months = x and the interest rate = y, one finds that  $xy = 873,61$  in all three cases.



It was not possible to determine what the number of months were that USM (Bell) used in the calculations. It must, however, be taken for granted that they were the same in all three instances because the shares were bought and sold at the same dates. Substituting a fixed  $x$  in  $xy = 873,61$  indicates that all three shares had the same return over four years.<sup>1</sup> The three companies operated in different markets yet they achieved exactly the same returns. This is a statistical event with an exceedingly low probability.

Intercomp's share price of R1,123,208 was thus calculated as follows: 18,2 (or  $y$ ) per cent on the original investment of R5 980 for 48 (or  $x$ ) months (R4 353,44) plus the original investment (R5 980) divided by the number of shares (9 200). There was no corresponding capital growth in the shares of relevant companies, yet this lucky investor (punter?) received a return of approximately 18 per cent. The investor was bound to tell others of his good fortune. *They were misled.*

In another letter (signed by Bell) dated 1 March 1994 to a shareholder, Bell reveals his unique crystal ball gazing technique.

"Subject to companies achieving a stock market listing your share portfolio will have a value of R98 333,40 in March 1998". (Committee's underlining).

<sup>1</sup> Substituting  $x$  with 48 months gives a return of 18,2 per cent in all three cases

This sentence merits no argument. It is an outrageous, unsubstantiated statement about the future. It would obviously only be accepted by an unsophisticated investor audience. As an investor wrote to the Committee:

"I have my stupidity pointed out to me by investment people who felt that USM should have been investigated back in 1991".

Bell and Capper felt strongly that the price of a share is not determined by the net asset value per share, but by a host of other factors such as the future expectation of investors. The reasoning is obviously true. All the other factors (apart from the net asset value) combined determine the demand for and supply of, and hence the price, of a particular share—with one major proviso. The market on both the demand and the supply side has to be well-informed. The supply and demand for listed shares for each trading day are published in newspapers. The supply and demand (and what is more, an artificial demand created by eager brokers) for unlisted shares in the case of USM's target companies are known only to the seller, namely USM. USM (Bell) determines the price of the target companies' share prices, not the market. *The investors were misled to believe the shares are worth more than they really are.*

In a letter dated 22 April 1994 to a client Bell states:

"As you can see, you have already achieved above average growth on your investment, and I would advise you to secure further growth at 22% per annum, by rolling over your investment for another 24 months".

The following is an excerpt from a letter received by the Committee from the son of a deceased USM client.

"I asked my accountant to examine the financial statement of Karkloof Milling Limited and to comment on it, the book value of the shares was calculated to be 5,1 cent per share. These were sold to mom at 85 cent each. . . . protect people, especially the old and uneducated against exploitation like this. My mother, aged 83, never really understood the details of this investment as her mind was deteriorating. A year after this investment was made she was not able to comprehend or follow day to day conversation".

## 7. The brokers

It was stated previously that discussions were held with Conway and Mr Y. Officials of the Committee also held discussions with three other USM brokers. Bell insisted on being present during these discussions. The brokers were ill-equipped to advise consumers about investments. Their understanding of financial affairs was pathetic, and this statement is not based on the fact that none of them could read a balance sheet.

One broker thought that the Committee investigated USM because its turnover decreased. He wondered why the Committee was, for example, not also investigating motor car manufacturers. Their turnovers (according to him) have also decreased. This broker could advise the totally uninformed only.

As part of her strategy to foster good relationships with clients, another broker tried to inform her clients every four months of the "values of their investments". The values were easy to calculate. Bell told her to simply add 22 per cent interest to the value of the original investment.

Another broker was previously employed as a train driver ("goods and mainline"). This experience helped him to build up a client base because he met many people.

The brokers who were interviewed seemed impressively loyal to USM. This loyalty is illustrated by the fact that a broker (not necessarily one of the three under discussion) sold shares in the target companies to his mother-in-law. Perhaps, on reflection, this is not a good example of loyalty. The brokers believed everything and anything they were told by Bell and Conway. Their backgrounds and knowledge made it impossible to question anything they were told by Bell and Conway regarding USM and the target companies. *These brokers were, by accident or design, misled by Bell and Conway. The same brokers, by accident, misled their clients.*

## 8. Conway's "A brief summary of USM Investments"

The Committee obtained an undated document with the heading "**A BRIEF SUMMARY OF USM INVESTMENTS**". The document was signed by Conway. It was probably written sometime in 1993, because Conway mentions in the document that USM began its operation in 1986 and "... Our operation has expanded quite rapidly in the seven years we have been in existence ...".

The following is a quote from this document:

"U.S.M., as already stated, has expand (sic) very rapidly and has assets and owns property of just over three million rand. If you compare this with the assets of many other broker firms of our size you will be able to see how impressive it really is".

*This statement is untrue.* USM's financial statements for the year ended 31 December 1993 reflected fixed assets of only ±R296 000. There is no evidence to support the allegation that USM acquired property to the value of over R3 million between 1 January 1993 and Conway's "A brief summary of USM Investments". Whoever read this document prepared by Conway (USM) was misled.

The sentence "If you compare this with the assets of many other broker firms of our size you will be able to see how impressive it really is", is totally inane.

## 9. The experiences of some shareholders

The Committee received more than 100 responses from irate clients of USM after publication of the notice of the 8 (1) (a) investigation. The following are excerpts from these responses. They illustrate USM's handling of their clients, as well as the nature of USM's unsophisticated investor audience.

"I phoned on numerous occasions, only to find that the telephone was not being answered. I phoned Telkom to test the number, and they assured me that the phone was in order ... It appears that 'new monies' into the Co. are used to settle 'older' investors like myself, and that the re-trade issue is a complete farce".

"To date I have not heard a word. Furthermore the firms in which I have invested my money, with the exception of Aludie Limited, have not sent me Annual Financial Statements since February 1993".

"Four to five phone calls daily to the people involved have on many occasions left me with much to desire. Always having to be referred from one person to another, and being given numerous explanations for late payment".

"Contact with USM. Very evasive and representations of an investment profile was misleading upon reflection."

"After numerous phone calls to USM Head office Durban, none of which were returned, as the person I wanted was out, at a meeting, busy, not available, etc I finally wrote a letter . . ."

"I am a widow and pensioner (a very small pension) so the lack of interest from USM will affect me very much".

"This money is not a lot but to me it is everything I have, I realise it was a gamble when I invested this money, but it sounded very good".

"We made numerous phone calls to USM. . . . When I want to speak to a Mr Bell he is never there or in a meeting and our calls go non returned and when you phone again you get the same answer. . . . It is very important for us to get our money back as we do have accounts that we have to pay of as we have been handed over to the lawyer already".

"I have phoned their offices on quite a few occasions but never get a result. Is there anything else I can do?"

"My complaint is that after several telephone calls and unanswered correspondence, I have not yet received any monthly interest payments for September and October 1994. . . . I am retired and on pension, and am reliant on this R200 a month interest to meet the increase in the cost of living".

"... phoned me over a period of years and eventually after receiving yet another letter from the Std Bank to say that the interest rate had fallen again (20%—12% in ten years) . . . happened to phone again & I agreed to see her at home. She offered to still let me get payments equivalent to the Std Bank but the amount of R375 per month instead of quarterly. Plus after  $\pm$  4 years my capital would increase to R40,000 whereas the Std Bank did not increase the capital at all. . . . I was alerted to the problem when I did not receive my R375 a month payments for the last 2 months".

"In December 1992 Mr . . . solicited me on behalf of USM Investments, asking me how my money was invested, and when informed it was with NBS Fixed Deposit he indicated that he and his company could improve on this investment and could offer over 16% if I invested with them, and that this was not a high risk investment".

"After I made  $\pm$  20 telephone calls to Mr David Bell in the Durban office I was promised . . . I have heard nothing from him. I would like to mention that I had polio as a child and am disabled with the minimum use of certain limbs and due to ill-health have medical bills to settle. The money I invested with USM is my entire savings. I would like to have it, plus interest, as promised, as soon as possible".

"The result was a stoney silence typical of an obstinate refusal to reply to any correspondence. . . . Bank advised . . . to say payment had been stopped by drawer. I 'phoned Bell right away. He feigned surprise then said he'd forgotten to advise the bank that his "stop" instruction did not apply".

"Therefor for 8 years USM have used our money with no recompense or interest being paid. I believe this is a "rip off" "

"I could write a book about the endless telephone calls I have made to this company, where I was continually told that Mr Bell and Mr Capper were not available, three visits to their offices where-after much insistence on seeing these gentlemen, I was informed by both of them that I would have my money returned to me and three post dated cheques given to me, 2 of which were returned by the bank after depositing. The third cheque I have not deposited due to the circumstances".

". . . I am letting you know how concerned I was that an old age complex had been 'worked' for investments".

"We have made many calls to them in Durban but they always had excuses".

"As I am a widow I have no other income, and I also need to buy food for my children."



"... took a cheque of R100 000 from me. Since the 14th of April I have only received four amounts ... When I phone I only get promises and I am now very worried as I rely on this income to live".

"I invested R23 600.00 in the company on 1 August 1991 for a period of 3 years after being assured that I would receive "double my investment" at the end of the said period".

"The receptionists always asks whose calling and she takes my name and she says she will give them a message but for 3 days there was no reply. On the fourth day I went to see ...".

"USM has fully committed themselves to the payout of the maturity amount, by forwarding me the "Post Dated Cheques". There is no question here relating to a JSE Listing, and me having to wait for this".

"At the same time I phoned my Broker Mr Stephen J Conway to try and find out what was going on he still had the cheek to tell me that he assures me my money is safe there is no problem and USM will pay me out when my 3 years is up".

"I ... am very anxious as my sister ... also has money and has had cheques bounce, and I am an old age pensioner and that is all I own".

"That evening Mr Bell phoned me. He said not to contract my lawyer as this would only delay matters."

"Given the fact that I am unable to work, it stands to reason that I am in desperate need of my money which I invested at USM INVESTMENTS."

"In 1988 Mr Bell of USM Brokers sold me 88 400 fully paid ordinary shares in a company called General Housing Limited. Since buying those shares I have never received a balance sheet, though I have tried to contact Mr Bell on numerous occasions without success. As I now want to sell the shares. I have twice recently phoned to speak to Mr Bell but he is always unavailable and never returns my calls".

## 10. Conclusion and recommendations

USM, through its directors Bell, Capper, Conway and White operated a scheme which was nothing more than a bubble. Some investors made money. Those that made money were handsomely rewarded. They were the early birds. But the money they made was not the result of shrewd investments. Their returns were paid for by new investors who were attracted by lucrative "returns".

At first USM could afford to re-trade shares. It made huge profits by selling shares at 50 cents and more for which it paid only 0.01 cents. These profits were used to provide for the substantial returns made by hundreds of shareholders. Eventually these funds were depleted by, among other things the "returns" of the lucky shareholders. To provide later entrants with substantial returns still later entrants had to pay even more for the shares.

The returns achieved by many shareholders were not reflected by the performances of the target companies. As a general statement it may be said that the performances of the target companies were average and even poor. They did not even sustain a moderate capital growth. *The shareholders were led to believe the opposite by USM.*

The scheme could have carried on *ad infinitum*, provided that there were enough buyers and USM had enough shares to sell. USM ran out of shares to sell and this, combined with a sluggish market, caused a liquidity problem for USM. This made re-trading difficult if not impossible. The expectations of anxious investors were dealt a cruel blow when the banks returned the cheques they received from USM.

The name South African Unlisted Securities Market Exchange (Pty) Ltd itself could deceive investors. The name creates the impression of the existence of an exchange where unlisted securities could be bought and sold. This is clearly not the case.

The Committee will request the Registrar of Companies to reconsider the use of the word "Exchange" in a company's name.

The business practices of The SA Unlisted Securities Market Exchange (Pty) Limited, David Richard Bell, Brian Lawrence Capper, Stephen Justin Conway and John Dawson White in the opinion of the Committee constituted harmful business practices. There are no grounds justifying the practices in the public interest. It is accordingly recommended that the Minister under section 12 (1) (b) and (c) of the Act:

- (i) declares unlawful the business practice whereby The SA Unlisted Securities Market Exchange (Pty) Limited, David Richard Bell, Brian Lawrence Capper, Stephen Justin Conway and John Dawson White—
  - (a) directly or indirectly invite the public to make investments; or
  - (b) receive investment funds from investors for management or re-investment of such funds on behalf of the investor,
 without the written consent of the Business Practices Committee; and
- (ii) directs David Richard Bell, Brian Lawrence Capper, Stephen Justin Conway and John Dawson White to—
  - (a) refrain from applying the harmful business practice;
  - (b) cease to have any interest in a business or type of business which applies the harmful business practice or to derive any income therefrom;
  - (c) refrain from at any time applying the harmful business practice; and
  - (d) refrain from at any time obtaining any interest in or deriving any income from a business or type of business applying the harmful business practice.

**LOUISE A. TAGER,**

Chairman: Business Practices Committee.

17 November 1994.

### SINOPSIS

Die Sakepraktykekomitee (die Komitee) het klagtes teen The SA Unlisted Securities Market Exchange (Edms.) Beperk (USM) en sy direkteure, ingevolge artikel 8 (1) (a) van die Wet op Skadelike Sakepraktyke (Wet No. 71 van 1988), ondersoek. USM het opgetree as 'n makelaar en aandele in verskeie ongenoteerde maatskappye aan die publiek verkoop.

Die opbrengs wat baie aandeelhouers gekry het word nie gereflekteer in die winste van die maatskappye nie. USM het die aandeelhouers die teenoorgestelde laat glo. Die aandeelhouers se opbrengs is betaal deur nuwe beleggers. Die sakepraktyke van USM, soos bedryf deur sy direkteure David Richard Bell, Brian Lawrence Capper, Stephen Justin Conway en John Dawson White is na die mening van die Komitee skadelike sakepraktyke.

Die Komitee het aanbeveel dat die Minister van Handel en Nywerheid USM, Bell, Capper, Conway en White verbied om, sonder die toestemming van die Komitee, regstreeks of onregstreeks uitnodigings aan die publiek te rig om beleggings te maak of om beleggingsfondse van beleggers vir bestuur of herbelegging van sodanige fondse namens die belegger, te ontvang.

### NOTICE 1356 OF 1994

#### DEPARTMENT OF TRADE AND INDUSTRY

#### HARMFUL BUSINESS PRACTICES ACT, 1988

I, Trevor Andrew Manuel, Minister of Trade and Industry, after having considered a report by the Business Practices Committee in relation to an investigation of which notice was given in Notice 1136 of 1994 published in *Government Gazette* No. 16026 of

### KENNISGEWING 1356 VAN 1994

#### DEPARTEMENT VAN HANDEL EN NYWERHEID

#### WET OP SKADELIKE SAKEPRAKTYKE, 1988

Ek, Trevor Andrew Manuel, Minister van Handel en Nywerheid, na oorweging van 'n verslag deur die Sakepraktykekomitee met betrekking tot 'n ondersoek waarvan in Kennisgewing No. 1136 in *Staatskoerant* No. 16026 van 13 Oktober 1994 kennis gegee is, welke

13 October 1994, which report was published in Notice 1355 in *Government Gazette* No. 16176 of 12 December 1994, and being of the opinion that a harmful business practice exists which is not justified in the public interest, do hereby exercise my powers in terms of section 12 (1) (b) and (c) of the Harmful Business Practices Act (Act No. 71 of 1988), as set out in the Schedule.

**T. A. MANUEL,**

Minister of Trade and Industry.

### SCHEDULE

In this notice, unless the context indicates otherwise—

**"harmful business practice" means—**

- (a) directly or indirectly inviting the public to make investments; or
- (b) receiving investment funds from investors for management or re-investment of such funds on behalf of the investor,

without the written consent of the Business Practices Committee.

**"the parties"** mean The SA Unlisted Securities Market Exchange (Pty) Ltd, David Richard Bell, Brian Lawrence Capper, Stephen Justin Conway and John Dawson White.

1. The harmful business practice is hereby declared unlawful in respect of the parties.

2. The parties are hereby directed to—

(a) *refrain from applying the harmful business practice;*

(b) *cease to have interest in a business or type of business which applies the harmful business practice or to derive any income therefrom;*

(c) *refrain from at any time applying the harmful business practice; and*

(d) *refrain from at any time obtaining any interest in or deriving any income from a business or type of business applying the harmful business practice.*

3. This notice shall come into operation upon the date of publication hereof.

verslag gepubliseer is by Kennisgewing 1355 in *Staatskoerant* No. 16176 van 12 Desember 1994, is van oordeel dat 'n skadelike sakepraktyk bestaan wat nie in die openbare belang geregverdig is nie, en oefen hiermee my bevoegdheid uit kragtens artikel 12 (1) (b) en (c) van die Wet op Skadelike Sakepraktyke, 1988 (Wet No. 71 van 1988), soos in die Bylae uiteengesit.

**T. A. MANUEL,**

Minister van Handel en Nywerheid.

### BYLAE

In hierdie kennisgewing, tensy uit die samehang anders blyk, beteken—

**"skadelike sakepraktyk"—**

- (a) regstreeks of onregstreeks uitnodigings aan die publiek rig om beleggings te maak; of
- (b) beleggingsfondse van beleggers vir bestuur of herbelegging van sodanige fondse namens die belegger, te ontvang,

sonder die skriftelik toestemming van die Sakepraktykekomitee.

**"die partye"** The SA Unlisted Securities Market Exchange (Pty) Ltd, David Richard Bell, Brian Lawrence Capper, Stephen Justin Conway en John Dawson White.

1. Die skadelike sakepraktyk word hiermee ten opsigte van die partye onwettig verklaar.

2. Die partye word hiermee gelas om—

(a) *af te sien van die toepassing van die skadelike sakepraktyk;*

(b) *op te hou om enige belang in 'n besigheid of tipe besigheid te hê wat die skadelike sakepraktyk bedryf, of om enige inkomste daaruit te verkry;*

(c) *te gener tyd die skadelike sakepraktyk te bedryf nie; en*

(d) *te gener tyd enige belang in 'n besigheid of tipe besigheid wat die skadelike sakepraktyk bedryf te bekom nie, of om enige inkomste daaruit te verkry nie.*

3. Die kennisgewing tree in werking op die datum van publikasie hiervan.

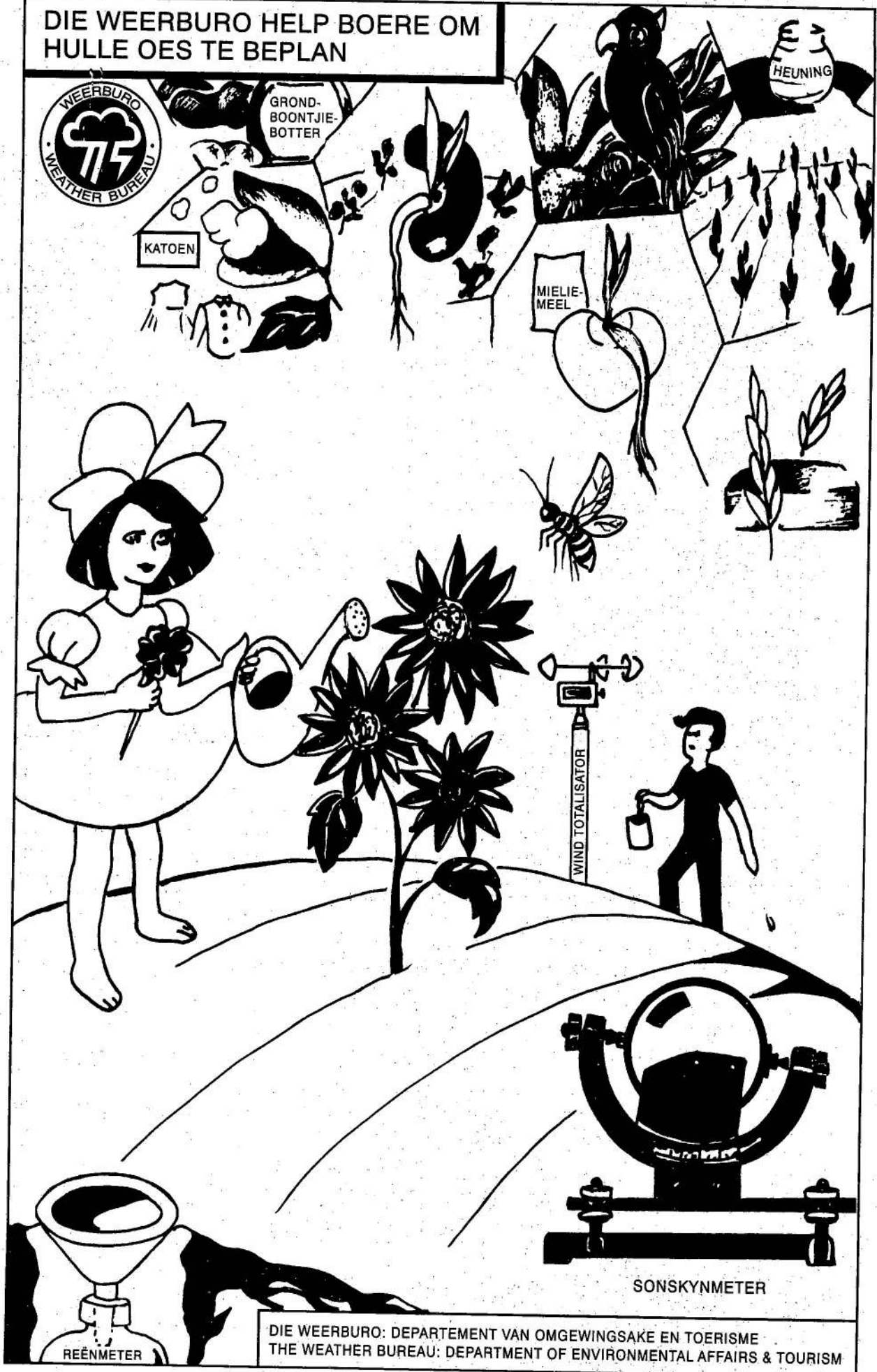


# THE WEATHER BUREAU HELPS FARMERS TO PLAN THEIR CROP

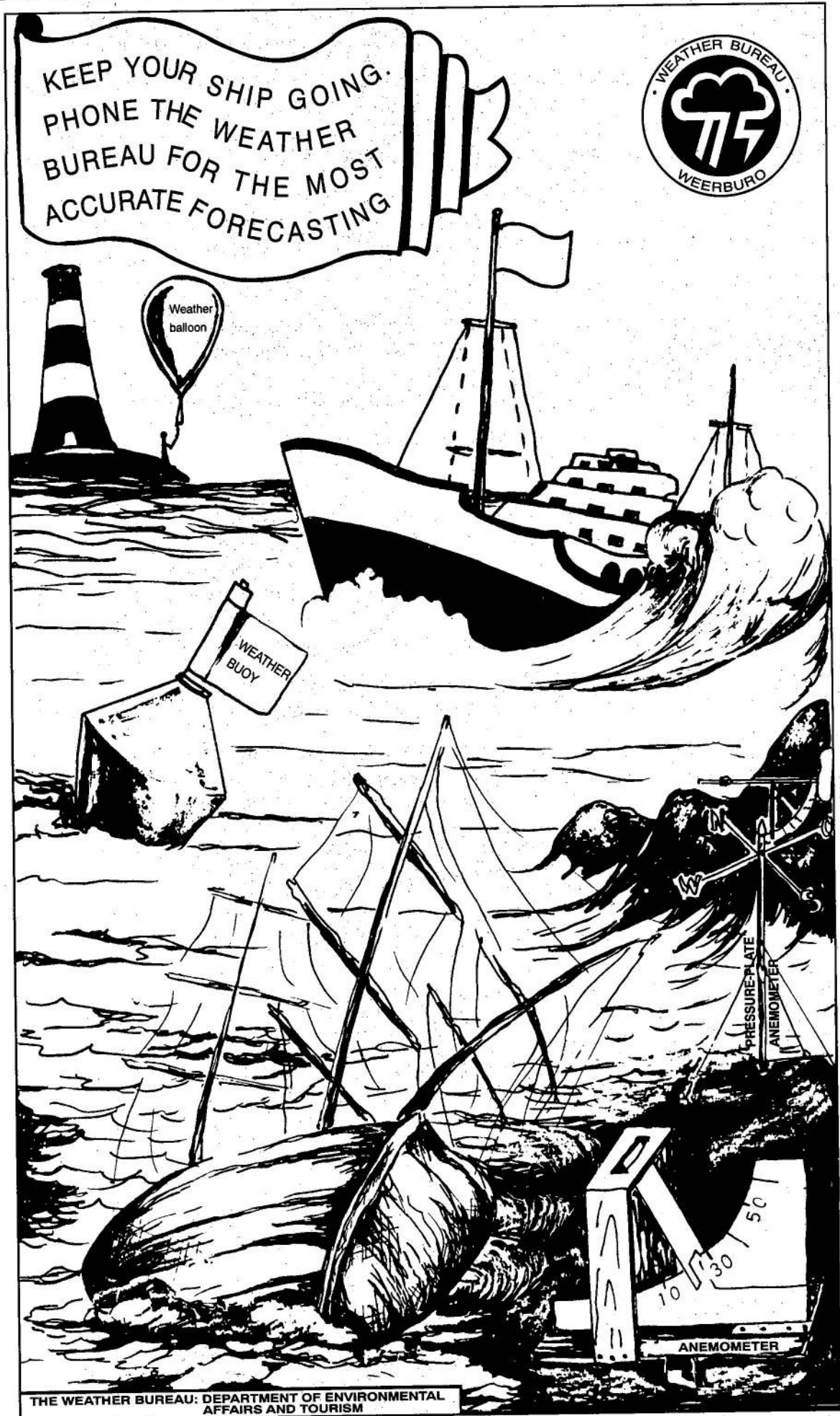


THE WEATHER BUREAU: DEPARTMENT OF ENVIRONMENTAL AFFAIRS & TOURISM  
 DIE WEERBURU: DEPARTEMENT VAN OMGEWINGSAKE EN TOERISME

# DIE WEERBURO HELP BOERE OM HULLE OES TE BEPLAN



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IS YOUR SITE REGISTERED?  
IS JOU TERREIN GEREGISTREER?



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