

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

CASE NO: **28 /2012**

In the matter of:

**THE REGISTRAR OF SHORT-TERM INSURANCE** Applicant

and

**DISCOVERY INSURE LIMITED** Respondent

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**ORDER**

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WITH DUE CONSIDERATION to the settlement agreement (attached marked annexure "A") in terms of section 6B(7)(a) of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001, I hereby determine that the Respondent contravened section 44 of the Short-Term Insurance Act, No 53 of 1998 (Act) and impose a penalty of R50 000 to be paid on or before 12 October 2012. The remaining terms and conditions of the settlement agreement are incorporated and made an order of the Enforcement Committee.

I make no order regarding costs.

Signed at PRETORIA on 4 October 2012.

  
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C. F. Eloff

Chairperson of the Enforcement Committee.

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In the matter of:

**THE REGISTRAR OF SHORT-TERM INSURANCE**

Applicant

and

**DISCOVERY INSURE LIMITED**

Respondent

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**SETTLEMENT AGREEMENT IN TERMS OF SECTION 6B(7)(a)  
OF THE FINANCIAL INSTITUTIONS (PROTECTION OF  
FUNDS) ACT, NO 28 OF 2001**

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**1. The parties**

- 1.1. The parties to this agreement are Mr Jonathan Dixon in his capacity as the Registrar of Short-Term Insurance ("the Registrar") as defined in section 2 of the Short Term Insurance Act, 53 of 1998 ("the STIA) read with section 1 of the Financial Institutions (Protection of Funds Act, 28 of 2001 (the FI Act); and
- 1.2. Discovery Insure Ltd ("the Respondent"), a company duly incorporated in accordance with the laws of the Republic of South Africa, bearing registration number 2009/011882/06. The Respondent is a registered insurer and is herein represented by Mr Anton Ossip in his capacity as chief executive officer of the Respondent and who warrants that



he is authorised by the Respondent to conclude this agreement.

## **2. Background Information and the Contravention**

- 2.1. During the period 1 June 2011 to 1 August 2012 the Respondent, as a regular feature of its business, offered short-term insurance policies to third parties. When taking up the Discovery Insure insurance policies, clients had the option of joining the Vitality Drive programme, an incentive based programme which rewarded members based on their driving ability, driving history and safety.
- 2.2. The parties agree that the offering of the Travel and Card Cash Back benefits that formed part of the Vitality Drive product were not linked to risk and offering these with the Discovery Insure product constituted an inducement to clients to enter into and continue short-term policies as prohibited by section 44 of the STIA.

## **3. The mitigating circumstances**

- 3.1. It is also agreed that the following mitigating factors are relevant to the matter:
  - 3.1.1. The Respondent acted in good faith and obtained legal advice regarding complying with the STIA prior to launching the Vitality Drive offering;
  - 3.1.2. The Respondent accepted responsibility for the contravention; fully co-operated with the Registrar's investigation and the enforcement action; and



3.1.3. The Respondent has taken steps to rectify the contravention to ensure that the product offering is compliant with the STIA.

**4. The agreed penalty**

4.1. In the light of the above, and in terms of section 6B(7)(a) of the FI Act, the parties have agreed that the Respondent will pay a penalty of R50 000 in respect of the contravention on or before 12 October 2012 in settlement of the matter.

4.2. The parties humbly request that the Honourable Chairperson makes the settlement agreement an order of the Enforcement Committee as envisaged in section 6B(7)(b) of the FI Act.

**5. Other conditions**

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

5.2. If the Respondent does not comply with the terms of this agreement and it is necessary for the Registrar and/or the Financial Services Board (FSB) to proceed with legal proceedings, the Respondent herewith consents to pay all legal costs to the Registrar and/or the FSB on the Attorney

and Client scale in terms of the High Court Rules inclusive of collection commission and Value Added Tax.

- 5.3. No leniency or postponement given by the Registrar to the Respondent or any amendment to the terms and conditions of this agreement will be binding unless such postponement, leniency or amendment is reduced to writing and signed by the parties. Any leniency or postponement granted by the Registrar or any amendment to this agreement shall not be a novation of the cause of action in terms whereof the Respondent was found to have contravened the Act.
- 5.4. Any receipt of a payment by the Registrar and/or the FSB after the due date shall be without prejudice to any of the rights of the Registrar and/or the FSB.
- 5.5. This Agreement constitutes the whole agreement between the parties in respect of the offer to pay a penalty.
- 5.6. This agreement is in full and final settlement of the Respondent's liability for an administrative sanction to the Registrar arising from this contravention.
- 5.7. The parties choose as their *domicillum citandi et executandi* their respective address set out below for all purposes arising out of or in connection with this agreement at which addresses all the processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties. However the notice contemplated in terms of section 6E of the FI Act may be delivered by electronic email. For the



purpose of this agreement the parties' respective addresses shall be:

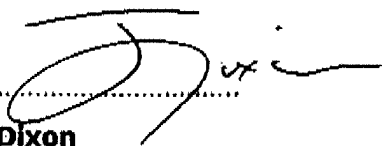
5.7.1. Financial Services Board:

Block B, Riverwalk Office Park  
41 Matroosberg Road  
Ashlea Gardens ext 6  
Pretoria  
0081


5.7.2. Respondent:

155 West Street  
Sandton  
2146  
[rickyf@discovery.co.za](mailto:rickyf@discovery.co.za)

Signed at PRETORIA on ..... 03 October 2012 ..... on behalf of the Registrar.

  
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**J Dixon**

Signed at SANDTON on ..... 03 Oct 2012 ..... on behalf of the Respondent.

  
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**R Farber**