

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

CASE NO: **7/2012**

In the matter of:

**THE REGISTRAR OF FINANCIAL SERVICES  
PROVIDERS**

Applicant

and

**MATTHYS JOHANNES MARAIS TRADING AS  
PROTEA MAKELAARS**

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:

1. Section 13(3) read with section 13(4) of the Financial Advisory and Intermediary Services Act, No 37 of 2002 ("the Act");
2. Section 17(1)(a) of the Act;
3. Section 2 of the General Code of Conduct for Authorised FSP's and Representatives; and
4. Section 11 of the General Code of Conduct for Authorised FSP's and Representatives.

I hereby impose a cumulative penalty of R150 000 to be paid on or before 30 April 2013.

The remaining terms and conditions of the settlement agreement are incorporated and made an order of the Enforcement Committee.

Signed at **PRETORIA** on the ...<sup>3</sup>... day of **NOVEMBER 2012**.



.....  
**C F Eloff**  
**Chairperson of the Enforcement Committee**

*Annexure A*

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**MATTHYS JOHANNES MARAIS TRADING AS PROTEA MAKELAARS**

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

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**1. The parties**

- 1.1. The parties to the agreement are the Registrar of Financial Services Providers ("the Registrar") herein represented by German Emanuel Anderson in his capacity as the Deputy Registrar of Financial Services Providers; and
- 1.2. MATTHYS JOHANNES MARAIS (Respondent), an adult male, is registered as an authorized financial services provider bearing the FSP No. 3820. The Respondent trades as PROTEA MAKELAARS.

**2. Introduction**

- 2.1. The Registrar is of the opinion that the Respondent contravened the following:



- 2.1.1. Section 13(3) read with 13(4) of the Financial Advisory and Intermediary Services Act, no 37 of 2002 ("the Act");
- 2.1.2. Section 17(1)(a) of the Act;
- 2.1.3. Section 2 of the General Code of Conduct for Authorized FSP's and Representatives; and
- 2.1.4. Section 11 of the General Code of Conduct for Authorized FSP's and Representatives.

2.2. The Respondent wishes to enter into a settlement agreement with the Registrar as contemplated in section 6B(7)(a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001 ("the FI Act").

### 3. The contraventions

3.1. It is agreed between the parties that the Respondent contravened the provisions of the Act set out below.

#### **Count 1 [contravention of sections 13(3) and 13(4) of the Act]**

3.2. During the period 1 November 2008 until 12 August 2011 The Respondent appointed an individual to act as a representative of the Respondent. During or about the period January 2010 until January 2011, the Respondent appointed a second individual to act as a representative of the Respondent. The Respondent failed to maintain and update a register that recorded the following details in respect of these representatives:

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- 3.2.1. The name and business address;
- 3.2.2. Whether they acted as employee or mandatory; and
- 3.2.3. The categories in which such representatives were competent to render financial services.

**Count 2 [contravention of section 17 (1)(a) of the Act]**

- 3.3. Whilst the individuals referred to above acted as his representatives during the above mentioned period, the Respondent failed to appoint a compliance officer to monitor compliance with the Act by the Respondent and his aforesaid representatives.

**Count 3 [contravention of section 2 of the General Code of Conduct for Authorized FSP's and Representatives.]**

- 3.4. During the period 1 January 2011 until 12 June 2012 the Respondent failed to render financial services fairly with due skill, care and diligence and in the interests of his clients and the financial services industry in that he negligently failed to discharge the following duties:
  - 3.4.1. He did not conduct a financial analysis on 15 clients nor was there a record of the advice given to these clients; and
  - 3.4.2. 12 clients were not provided with details of the financial product sold.

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**Count 4 [contravention of section 11 of the General Code of Conduct for Authorized FSP's and Representatives]**

- 3.5. The Respondent during the period 1 November 2008 until 12 June 2012 failed to have and effectively employ the resources, procedures and appropriate technological systems that could reasonably be expected to eliminate as far as reasonably possible, the risk that clients, product suppliers and other providers or representatives would suffer financial loss through theft, fraud, other dishonest acts, poor administration, negligence, professional misconduct or culpable omissions.

**4. The mitigating circumstances**

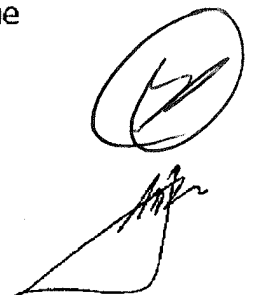
- 4.1. It was agreed that the following mitigating factors are relevant to the matter:

4.1.1. The Respondent accepted responsibility for the contraventions; and

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

**5. The agreed penalty**

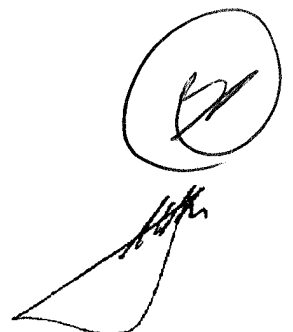
- 5.1. In the light of the above, and in terms of section 6B(7)(a) of the FI Act, the parties have agreed that the Respondent will pay a cumulative penalty of R150 000 on or before the 30 April 2013 in settlement of the matter.

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

**6. Other conditions**

- 6.1. This agreement is subject to approval by the Enforcement Committee and the parties specifically record that they are aware of the possibility that the Enforcement Committee may not accept the terms of this agreement. If the Enforcement Committee declines to make this agreement an order, then in such event this agreement will be null and void.
- 6.2. If the 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.
- 6.3. No leniency or postponement given by the Registrar and/or the FSB 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 and/or the FSB 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.

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- 6.4. Any receipt of a payment by the FSB after the due date shall be without prejudice to any of the rights of the FSB.
- 6.5. This agreement constitutes the whole agreement between the parties in respect of the offer to pay a penalty.
- 6.6. This agreement is in full and final settlement of the Respondent's liability for an administrative sanction to the Registrar arising from these contraventions.
- 6.7. 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:

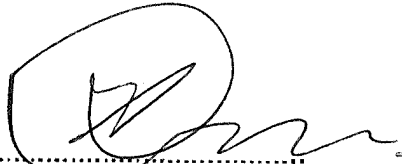
6.7.1. Financial Services Board  
Block B, Riverwalk Office Park  
41 Matroosberg Road  
Ashlea Gardens ext 6  
Pretoria  
0081

6.7.2. Respondent:  
Northern Street 6A  
Piet Retief  
2380  
[proteam@telkomsa.net](mailto:proteam@telkomsa.net)





Signed at **PRETORIA** on ..... *12* **NOVEMBER 2012** on behalf of  
the Registrar



.....  
G E Anderson

Signed at *PIET RETIEF* on ..... *12* **NOVEMBER 2012** on  
behalf of the Respondent.



.....  
M J Marais