

IN THE PROCEEDINGS BEFORE THE ENFORCEMENT COMMITTEE
ESTABLISHED IN TERMS OF SECTION 10 (3) OF THE FINANCIAL SERVICES
BOARD ACT, NO. 97 OF 1990

CASE NUMBER: 04/2016

In the matter of:

THE REGISTRAR OF COLLECTIVE INVESTMENT

SCHEMES

Applicant

and

MAGNUM OPUS INVESTMENT
MANAGERS (PTY) LIMITED

First Respondent

JAN RUDOLPH VAN NIEKERK

Second Respondent

ORDER

WITH DUE CONSIDERATION to the settlement agreement (attached marked annexure "A") in terms of section 6B (7) (a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001, I hereby determine that the Respondents contravened section 5 (1) of the Collective Investment Schemes Act, 45 of 2002. I hereby impose a penalty of R50 000 (Fifty thousand rand) on both Respondents on the basis of joint and several liability.

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

Signed at **PRETORIA** on the ^{13th}..... day of **April 2016**.



C F Eloff

Chairperson of the Enforcement Committee

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First Respondent

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

1. PARTIES TO THE AGREEMENT

1.1 The Applicant is the Registrar of Collective Investment Schemes (the Registrar) herein represented by Mr Jurgen Boyd in his capacity as the Deputy Executive Officer of Collective Investment Schemes.

and

1.2 The First Respondent is Magnum Opus Investment Managers (Pty) Limited, a company registered and incorporated in accordance with the company laws of the Republic of South Africa bearing registration number 2015/053675/07. The Second Respondent is Mr Jan Rudolph Van Niekerk



the Managing Director of the First Respondent who warrants that he has been duly authorised by the First Respondent to enter into this agreement.

- 1.3 The Respondents' business address is at Magnum Opus Offices, the Vineyards Office Estate, Jip de Jager Drive, Bellville, Cape Town.

2. THE CONTRAVENTION OF SECTION 5(1) OF THE COLLECTIVE INVESTMENT SCHEMES ACT, 45 OF 2002 (CISCA)

- 2.1. It is agreed between the parties that from August 2013 to October 2015 the Respondents administered a collective investment scheme, in circumstances where none of the Respondents were registered as managers of a collective investment scheme and/ or where the Respondents were not authorized agents of a registered collective investment scheme.

- 2.2. The Respondent's conduct constituted a contravention of section 5 (1) of CISCA.

3. THE MITIGATING CIRCUMSTANCES

- 3.1. It is agreed that *inter alia* the following mitigating factors are relevant to the matter:
 - 3.1.1. The Respondents undertook to rectify the contravention according to the Registrar's instructions by winding up the fund entirely with the assistance of an independent party that was approved by the Registrar;
 - 3.1.2. The contravention was as result of a misinterpretation of the law with the Respondents believing that if a collective investment scheme is not marketed to the public the collective investment scheme would fall outside of the FSB's regulatory ambit.

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- 5.3. No leniency or postponement given by the Registrar to the Respondents 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, which date shall be outlined in an invoice for payment of the penalty 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 only in respect of the Respondent's liability for an administrative sanction to the Registrar arising from this contravention.
- 5.7. The parties choose as their *domicilium 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:

The Applicant

Financial Services Board:
Block B, Riverwalk Office Park
41 Matroosberg Road

4 *[Signature]*

[Signature]

3.1.3. The Respondents expressed regret for their actions, admitted the contravention and gave their full co-operation to the Registrar to ensure that this matter is brought to finality;

3.1.4. The Registrar is not aware of any prejudice suffered by the investors ; and

3.1.5. The Respondents have never been found to have contravened CISCA prior to this contravention.

4. THE AGREED PENALTY

4.1. In light of the above, and in terms of section 6B(7)(a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001 (the FI Act), the parties have agreed that the Respondents will pay a penalty of R50 000 (Fifty Thousand Rand).

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 Should the Respondents not comply with the terms of this agreement and it becomes necessary for the Registrar and/or the 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, interest and Value Added Tax.

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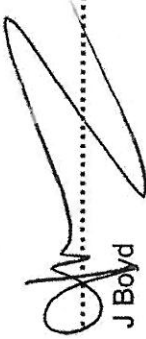
Ashlea Gardens ext. 6
Pretoria
0081

The Respondents:


c/o Mr Jan Rudolph Van Niekerk
Magnum Opus Investment Managers (Pty) Limited
E mail: investworx@gmail.com

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

Signed at PRETORIA on on behalf of the FSB and the
Deputy Executive Officer of Collective Investment Schemes.


.....
J Boyd

Signed at BELLVILLE on 06 APRIL 2016 on behalf
of the Respondent.


.....
JR Van Niekerk

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