

**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: 2197/2007

In the ex parte application of

**EXECUTIVE OFFICER OF THE  
FINANCIAL SERVICES BOARD**

Applicant

In re the business of:

**OVATION GLOBAL INVESTMENT SERVICES (PROPRIETARY) LIMITED**

(Registration No. 1998/006620/07)

**OVATION GLOBAL INVESTMENT NOMINEES (PROPRIETARY) LIMITED**

(Registration No. 1998/019798/07)

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**CURATORS 12<sup>TH</sup> REPORT TO COURT**

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**I N D E X**

1. Introduction
2. Reporting to the Registrar
3. Status of the Curatorship as at 15 September 2013
4. The extent of recoveries made on behalf of investors whose investments have been misappropriated or lost
5. The status of the litigation matter(s) in which the Ovation Companies are involved
6. Curators recommendations as to the future of the Ovation Companies

## 1. Introduction

1.1. The Ovation companies, referred to herein as "Ovation" or individually as "Ovation Services" or "Ovation Nominees" respectively, were placed under provisional curatorship in accordance with the provisions of s 5 of the Financial Institutions (Protection of Funds) Act, No 28 of 2001 ("the Protection of Funds Act") on 2 March 2007, which order was made final on 14 June 2007 and John Adrian Levin and Barend Petersen were appointed as the Ovation curators.

1.2. In the last report to this Honourable Court, the 11<sup>th</sup> Report dated 26 September 2012 and an addendum dated 19 October 2012, the Curators reported fully on the state of the curatorship as at 15 September 2012 and this Honourable Court is respectfully referred to that reports for further details.

1.3. When noting the 11<sup>th</sup> report on 14 November 2012, Fourie J directed, inter alia:

1.3.1. *"2. That Mr. John Adrian Levin be released as co-curator of the Ovation Companies referred to in the case heading;*

1.3.2. *3 That the remaining curator, Mr. Barend Petersen ("the curator"), continue to furnish the Registrar with progress reports relating to the curatorship on a quarterly basis or such other basis as may be agreed with the Registrar from time to time"*

1.3.3. *4. That the curator is directed to deliver a further report to Court by no later than 30 September 2013 or within 30 days of the ABSA litigation finally being disposed of either by way of final judgment or settlement (the alternative date) whichever occurs first.*

1.3.4. *5. That the report referred to in paragraph 4 must deal with the following matters:*

*5.1 the status of the curatorship as at 15 September 2013 alternatively, if the report is to be delivered by the alternative date, as at a date being fifteen (15) days prior to the alternate date;*

*5.2. the extent of recoveries made on behalf of investors whose investments have been misappropriated or lost;*

*5.3 the status of the litigation matter(s) in which the Ovation Companies are involved;*

*5.4 his recommendation as to the future of the Ovation Companies."*

A copy of Fourie J's order is attached, marked "A".

1.4. This Report is being furnished pursuant to Fourie J's order referred to in 1.3.

1.5. The High Court released Mr. J Levin at his request, as co-curator of Ovation.

## **2. Reporting to the Executive Officer of the Financial Services Board**

In accordance with the requirements of paragraph 2 of the order referred to in 1.3.1, I reported to the Registrar on progress with the curatorship at the end of December 2012, March 2013, January 2013 and June 2013.

## **3. Status of the Curatorship as at 15 September 2013**

3.1. I respectfully refer this Honourable Court to the 11<sup>th</sup> report of the Curators dated 30 September 2011 which deals with the status of the curatorship as at that date.

3.2. My office continues to deal with telephone and email enquiries. The enquiries are mainly requests for statements reflecting balances, requests for tax certificates, queries relating to investments and redemptions made both prior to and during the curatorship, queries from Common Cents clients, queries from deceased estate administrators, clients inquiring about their living annuities and contact numbers for the new administrators.

3.3. Furthermore ongoing enquiries relating to the ABSA litigation are being attended to.

## **4. The extent of recoveries made on behalf of investors whose investments have been misappropriated or lost**

4.1. In our previous reports we informed the Court that ABSA's objection to our amended particulars of claim had been dismissed on 27 July 2011 and that ABSA delivered its plea on 28 November 2011. ABSA denied liability. Thereafter our legal advisors and our forensic team set about preparing for

trial. This preparation included the collating of documents relevant to the ABSA claim relating to transactions in more than 2800 investor accounts.

4.2. The Discovery Affidavit was filed on 23 January 2013 with at the High Court and a copy of the Filing Notice in enclosed as Annexure "B".

4.3. During February 2013, a Notice in terms of Rule 35, annexed hereto marked "C", was served on ABSA requiring ABSA to make discovery within twenty days.

4.4. In a letter dated 7 June 2013, annexed hereto marked "D", my attorneys requested ABSA to submit their discovery affidavit within 30 days, failing which an application would be made to compel ABSA to file such discovery affidavit. In a letter dated 24 June 2013, annexed hereto marked "E", ABSA requested an extension of the deadline to 29 July 2013 which request was granted.

4.5. ABSA however failed to make discovery and an application to compel in terms of rule 35 (7), annexed hereto marked "F", was lodged on 22 August 2013. This application will be heard on 28 October 2013.

4.6. In a letter dated 20 September 2013, annexed hereto marked "G" ABSA requested an extension to deliver the discovery affidavit on 27 September 2013. Whilst the discovery affidavit is yet to be delivered, it is anticipated that it will be delivered prior to the application being heard on 28 October 2013.

4.7. With regard to recoveries made to date, we reported in our 12<sup>th</sup> report that as at 30 September 2012 that we had recovered an amount of R12 668 442. Litigation against certain former officials are in various stages of progress. Dividends still have to flow from various Cruickshank companies to Ovation Global Investment Holdings Pty Ltd and I/E AL Cruickshank and from there to Nominees. This includes proceeds, in terms of a settlement agreement, from the sale of Legatus which has not been finalized.

## **5. The status of the litigation matter(s) in which the Ovation Companies are involved**

5.1. But for the claim against ABSA, neither of the Ovation companies is engaged in any litigation.

## **6. Curators Recommendations as to the future of the Ovation Companies**

6.1. In the last report the Curators informed the court, for the reasons set out in that report, that in our opinion the interest of the investors whose investments had been stolen would be best served if the curatorship were to continue until the ABSA litigation has run its course.

6.2. I still hold that view. I accordingly recommend that the Ovation companies continue under curatorship in accordance with the final order dated 14 June 2007, as amended by Fourie J and that I be directed:

6.2.1. to continue to furnish the Registrar with progress reports relating to the curatorship on a quarterly basis or such other basis as we may agree with the Registrar from time to time; and

6.2.2. to deliver a further report to this Honourable Court by 30 September 2014 or within 60 days of the ABSA litigation being disposed of, whether by way of final judgement or by settlement between the parties, whichever occurs first, in which the following matters are addressed:

6.2.2.1. The status of the curatorship as at 15 September 2014 or the alternate date;

6.2.2.2. The extent of recoveries made on behalf of investors whose investments have been misappropriated or lost;

6.2.2.3. The status of the litigation matter(s) in which the Ovation companies are involved; and

6.2.2.4. My recommendation as to the future of the Ovation companies.

DATED AT CAPE TOWN ON THIS 30TH DAY OF SEPTEMBER 2013.

A handwritten signature in black ink, appearing to read 'Barend Petersen', with a stylized flourish at the end.

Barend Petersen

**Curator**

"A"

'X' 3 14/11/12

IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE HIGH COURT, CAPE TOWN)

Fourie

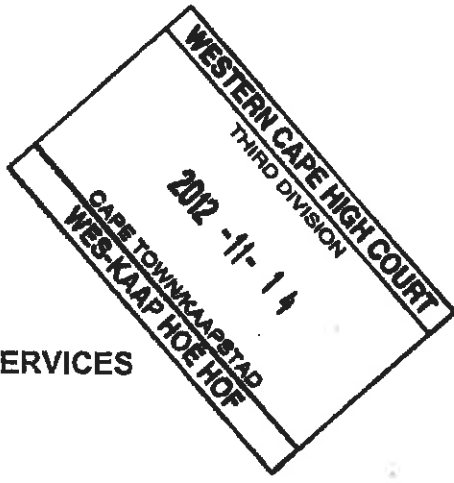
BEFORE THE HONOURABLE MR JUSTICE BINNS-WARD  
ON WEDNESDAY 14 NOVEMBER 2012

CASE NO: 2197/2007

In the ex parte application of:

EXECUTIVE OFFICER OF THE  
FINANCIAL SERVICES BOARD

Applicant



In re the business of:

OVATION GLOBAL INVESTMENT SERVICES  
(PTY) LTD  
(Reg No. 1998/006620/07)

OVATION GLOBAL INVESTMENT NOMINEES  
(PTY) LTD  
(Reg No. 1998/019798/07)

(The Ovation Companies)

~~DRAFT~~ ORDER

Having heard counsel for the Applicant and having read the curators' eleventh report dated 26 September 2012 with its addendum, and the affidavit of German Emmanuel

Anderson dated 26 October 2012,

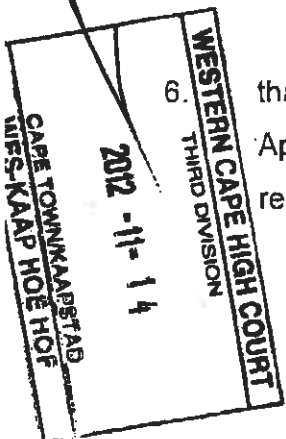
IT IS ORDERED:

1. that the curators' eleventh report dated 26 September 2012 attached to the

founding affidavit as attachment "GA3", and its addendum (annexure "GA4" to the founding affidavit) ("the addendum"), be noted;

2. that Mr John Adrian Levin be released as co-curator of the Ovation Companies referred to in the case heading;
3. that the remaining curator, Mr Barend Petersen ("the curator"), continue to furnish the Registrar with progress reports relating to the curatorship on a quarterly basis or such other basis as may be agreed with the Registrar from time to time;
4. that the curator is directed to deliver a further report to Court by no later than 30 September 2013 or within thirty (30) days of the ABSA litigation being finally disposed of, whether by way of final judgment or by settlement ("the alternative date"), whichever occurs first;
5. that the report referred to in paragraph 4 must deal with the following matters:
  - 5.1 the status of the curatorship as at 15 September 2013 alternatively, if the report is to be delivered by the alternative date, as at a date being fifteen (15) days prior to the alternative date;
  - 5.2 the extent of recoveries made on behalf of investors whose investments have been misappropriated or lost;
  - 5.3 the status of the litigation matter(s) in which the Ovation companies are involved; and
  - 5.4 his recommendation as to the future of the Ovation companies.

6. that on receipt of the curator's report referred to in paragraph 4 above, the Applicant shall within 20 days set the matter down for consideration of the report;



- 7. that the Applicant shall publish the curators' eleventh report and the addendum on its website; and
- 8. that the costs of this application be costs in the curatorship;

BY ORDER OF THE COURT

**WESTERN CAPE HIGH COURT**  
THIRD DIVISION  
2012 -11- 14  
**CAPE TOWN/KAAPSTAD**  
**WES-KAAP HOE HOOF**

REGISTRAR

Box 9  
Bisset Boehmke McBlain

ORIGINAL

"B"

1

**Strydom & Bredekamp**  
**287**  
T: (012) 460-1930  
F: (012) 460-8565

**IN THE NORTH GAUTENG HIGH COURT, PRETORIA**  
**(REPUBLIC OF SOUTH AFRICA)**

REGISTRAR OF THE NORTH GAUTENG  
HIGH COURT, PRETORIA  
PRIVATE BAK/PRIVAATSAK X67  
2013 -01- 24  
W. P. MALOUW  
PRETORIA 0001  
REGISTRAR OF THE NORTH GAUTENG  
HIGH COURT, PRETORIA

Case Number: 24067/2010

In the matter between:

**BAREND PETERSEN N.O.**

**FIRST PLAINTIFF**

(In his capacity as Curator of Ovation Global  
Investment Services (Pty) Ltd and of Ovation  
Global Investments Nominees (Pty) Ltd)

**JOHN ADRIAN LEVIN N.O.**

**SECOND PLAINTIFF**

(In his capacity as Curator of Ovation Global  
Investment Services (Pty) Ltd and of Ovation  
Global Investments Nominees (Pty) Ltd)

AND

**ABSA BANK LIMITED**

**DEFENDANT**

---

**FILING NOTICE**

---

DOCUMENT: PLAINTIFFS' DISCOVERY AFFIDAVIT – VOLUME 1 &  
2

FILED BY: **STRYDOM & BREDEKAMP ING**  
ATTORNEYS FOR PLAINTIFFS  
PARC NOUVEAU BUILDING  
225 VEALE STREET  
BROOKLYN, PRETORIA  
TEL: (012) 460-1930

REF: DLEAHY/evdh/HO0081

TO: THE REGISTRAR OF THE ABOVE HONOURABLE  
COURT  
PRETORIA

AND TO: **EDWARD NATHAN SONNENBURG**  
ATTORNEYS FOR DEFENDANT  
C/O ELOFF BRINK ATTORNEYS  
LORD CHARLES OFFICE PARK  
BUILDING A  
NORTH WING  
337 BROOKLYN ROAD  
C/O CHARLES STREET & BROOKLYN AVENUE  
BROOKLYN  
PRETORIA  
REF: AA VD MERWE/F1945

Copy received this \_\_\_ day of \_\_\_\_\_ 2013

2013 -01- 23

N. Schreiner 3:04

SBK

**ELOFF BRINK ATTORNEYS**  
LORD CHARLES OFFICE PARK  
BUILDING A, 1ST FLOOR, NORTH WING  
337 BROOKLYN ROAD  
C/O CHARLES STREET AND BROOKLYN ROAD  
BROOKLYN, PRETORIA  
Tel: (012) 346 7432 Faks: 0866 829 616  
E-mail: nicoline@aebrnk.co.za



IN THE NORTH GAUTENG HIGH COURT, PRETORIA  
(REPUBLIC OF SOUTH AFRICA)

" < "

Case No: 24067/2010

In the matter between:

**BAREND PETERSEN N.O.**

**FIRST PLAINTIFF**

(In his capacity as Curator of Ovation Global Investment Services (Pty) Ltd and of Ovation Global Investments Nominees (Pty) Ltd)

**JOHN ADRIAN LEVIN N.O.**

**SECOND PLAINTIFF**

(In his capacity as Curator of Ovation Global Investment Services (Pty) Ltd and of Ovation Global Investments Nominees (Pty) Ltd)

AND

**ABSA BANK LIMITED**

**DEFENDANT**

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**NOTICE IN TERMS OF RULE 35(1), (6), (8) & (10)**


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**BE PLEASED TO TAKE NOTICE** that the Plaintiff requires the Defendant:

1. In terms of Rule 35(1) to make discovery on oath within 20 (TWENTY) days of the service of this notice on you, of all documents or tape recordings relating to any matter in question in the above action (whether such matter is one arising between the above parties or not) which are or have at any time been in the possession or control of the Defendant.
2. In terms of Rule 35(6) to make available within 5 (FIVE) days after delivery of the Defendant's Discovery affidavit, all documents or tape recordings disclosed therein, to be inspected by die Plaintiff.

3. In terms of Rule 35(8) to furnish, at least 15 (FIFTEEN) days before the trial date, particulars of dates and of parties to any document which the Defendant intends using at the trial.
4. That the Defendant should submit at the trial the original documents or tape recordings which the Defendant may disclose, in terms of Rule 35(10).

DATED at PRETORIA on this 26<sup>th</sup> day of FEBRUARY 2013.

  
**STRYDOM & BREDEKAMP INC.**  
Attorneys for plaintiffs  
PARC NOUVEAU  
225 VEALE STREET  
BROOKLYN  
PRETORIA  
Tel.: (012) 460-1930  
Fax: (012) 460-8565  
Ref.: D LEAHY/evdh/HO0081

TO: THE REGISTRAR OF THE HIGH COURT  
PRETORIA

AND TO: **EDWARD NATHAN SONNENBURG**  
ATTORNEYS FOR DEFENDANT  
**C/O ELOFF BRINK ATTORNEYS**  
LORD CHARLES OFFICE PARK  
BUILDING A  
NORTH WING  
337 BROOKLYN ROAD  
C/O CHARLES STREET & BROOKLYN AVENUE  
BROOKLYN  
PRETORIA  
REF: AA VD MERWE/F1945

ELOFF BRINK PROKUREURS  
2013 -02- 26  
Sonder benadeling van regte  
Without prejudice

Received copy hereof in this the  
..... day of .....

 8:51



Datum gestuur: 2013 -06- 13  
Transmissiestrokie Gecheck:   
Gesplitpunt:   
Identiteit: Memo

# Strydom & Bredenkamp

BYROUWERS • ADVOKAATS • NOTARISSE / ATTORNEYS • GERECHTERS • NOTARIES

"D"

U Verw / Your Ref : A A VAN DER MERWE/F1945  
Ons Verw / Our Ref : D LEAHY/av/HO0081  
Datum / Date : 2013-06-07 alet@lawsb.co.za

ELOFF BRINK ATTORNEYS  
PRETORIA

BY FAX: 086 682 9616

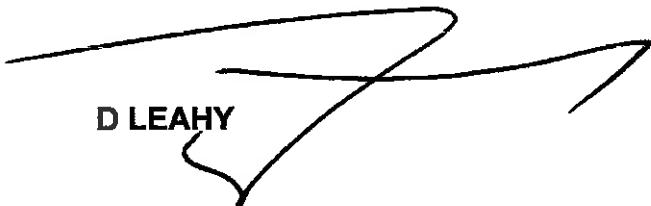
Sirs,

## OVATION GLOBAL INVESTMENTS SERVICES / ABSA BANK LTD

The abovementioned matter has reference.

We would be pleased to receive your client's discovery affidavit within 30 days of date of receipt of this letter, failing which we hold instructions to bring an application to compel your client to deliver such discovery affidavit.

Yours faithfully

  
D LEAHY

---

**STRYDOM & BREDEKAMP INGELYF**  
REG NO: 1996/000342/21 VAT NO: 4200169474

Parc Nouveau, Vealestraat 225, Brooklyn, Pretoria  
Posbus 1522, Groenkloof, 0027, DX 226 Pretoria, Tel: (012) 460-1930 Faks: (012) 460-8565  
Direkteure/Directors: Pieter Hendrik Strydom - BLC, LLB (UP), Denise Bredenkamp - B.PROC, LLB (UP),  
Denis Patrick Leahy - LLB (PU vir CHO)  
Bygestaan deur/Assisted by:  
Elani van den Heever - LLB (NWU) & Lizel Snyman - LLB (UP)



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S Hayes/J Smit/0304881 | our ref  
 DLEAHY/av/HO0081 | your ref

D Leahy

Strydom & Bredenkamp Ing  
 Parc Nouveau Building  
 225 Veale Street  
 Brooklyn  
 Pretoria  
 per email: alet@lawsb.co.za  
 per fax: (012) 460 8565

24 June 2013

Dear Sir/Madam

**OVATION GLOBAL INVESTMENT SERVICES / ABSA BANK LTD**

1. The above matter and your letter of 13 June 2013 have reference.

**DEFENDANT'S DISCOVERY**

2. We are currently in the process of compiling our client's discovery affidavit. We anticipate completion of this process towards the end July 2013. In the circumstances we kindly request an extension of the deadline referred to in your letter to 29 July 2013.
3. We await your confirmation (or otherwise) of the requested indulgence.

**YOUR CLIENTS' DISCOVERY**

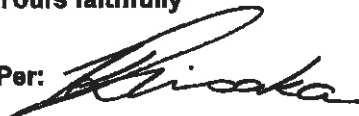
4. We kindly request copies of the documents discovered in your client's discovery affidavit.

directors  
 executives  
 and  
 consultants

M.M. Katz (chairman) P.C. Faber (chief executive) M. Mgudhwa (deputy chief executive) K. Abarder A. Aguilar R.J. Alcock A.C. Alexander D.B. Aitaway<sup>†</sup> S. Anthony C.J. Atkinson G.C. Badenhorst\* J. Balkin D. Band F.M. Bassa\* C. Becker\* A.F. Bembridge A. Bennett L.J. Bitchitz Z.D. Bilsden L. Bignault\* R. Boda A. Boshoff J. Brodbeck\* T. Buchler C.M. Bull A. Camay\* D.H. Carmichael V.O. Chaplin D. Chetty L. Christie C.L. Coles P.G.H. Colyn B.J. Croome\* P.H. Cronin<sup>†</sup> P.J. Dachs Z. Ebrahim C. Daniels M.S. Darso\* T.M. Desmond R. de la Harpe G.E. de Smit P. Descobiziles M.D.F.D.S. Domingos B. du Plessis\* I. du Plessis J.C. du Preez R.I. Forster E. Ellis A. Erasmus\* H. Farand A.C. Feinstein<sup>†</sup> M.J. Feinstein<sup>†</sup> G.S. Felthun I.P. Fenyene J.B. Ferraz J.S. Ferraz-Cardoso A.F.M. Ferreira J.R. Flex<sup>†</sup> R.L. Hartley M.R. Friedman R.M. Gad M.J. Garden C. Gelbart R. Goodman P.F.L. Geromont M.W. Grisdige C.L. Green<sup>†</sup> I.D. Gwaunza S.E.M. Hanif S.W. Harrison S. Hartley J.T.P. Haydock I.K. Hayes S.B. Hayes L. Helman J.D. Herbart G.R. Herholdt H.M. Herholdt E. Heystek A.C. Hoeben Prof.D.B. Hutchison\* A.V. Ismail Prof.A.J. Itzkowitz\* D. Joffe C.V. Johnson E.A. Johnson J.C. Jones D. Kamarzi\* S. Kasen J. Katz L.C. Katz G.P.J. Kalleman\* R.H. Kelly L. Kruger\* E.J.P. Lai King\* N. Lalla D.M. Lambert J.M. Langford I.B.W. Lawrence E.S. La Grange S.C. Lederman A. Lee P.A.K. la Roux<sup>†</sup> W.P. la Roux S.B. Lavelan S.A. Lewis N. Lopes J.D. Louber L. Louw S.A. Mackay-Davidson D. MacRobert<sup>†</sup> V. Magubane K.W. Makhubele G.F. Matan K. Merkmann D.H. Mashar M.W. Matlou S.L. Mbatha Y.A. Mendelsohn A.T. Meyers D.B. Messerschmidt A. Minnaar M.D. Molepo C. Morgan J.C. Morrissey M.G. Morrison M.A.C. Murphy H. Murray Chinelli N.A. Napier J.S. Naude\* J.S. Nelson\* N.H. Nolan A.J.L. Norton C.M. Ntuta G. Nyatanyi\* G.J. Oertel J.T. Oosthuizen S.P. Osborne T. Papanikolaou T.D. Papler M. Parker B.G. Patterson N. Pillay C.V. Pitman J.A. Pousson<sup>†</sup> J.P. Pretorius G.W. Reid P. Reyburn A.D. Richards\* A. Rocher P. Rogers A.G. Rubin R.B. Rudolph J. Rusch M.L. Serembock<sup>†</sup> G.C. Scott R.A. Scott H.B. Senekal B.J. Serebro\* L. Shadrach K.L. Simpson S. Singh N. Smit<sup>†</sup> H.M. Snyckers S.J. Spamer R.T. Stein M.T. Steyn V. Sijwell A.W. Symington S.P.M. Thouvouat\* L. Tibshraeny M.S. Tucker J.M. Valkin W.S.B. van der Colff V.L. van Coppenhagen L.M. van der Merwe\* C. van Loggerenberg A. van Niekerk G.M. van Niekerk R. van Rensburg I.W. Viljoen J. Viviers G. Vogelman\* S.R. von Schindling L. Vorster D.A. Wenblad S. Weideman H. Wessels P.A. Winer C.L. Wulfsohn M. Yudeken J.M. Zeff

5. The documentation reflected therein is voluminous. We therefore request that the documents be made available to us (if possible) in electronic format. Please advise whether the proposal is acceptable, and if so, when we can arrange for collection thereof from your offices.

Yours faithfully

Per: 

Edward Nathan Sonnenbergs Inc.



IN THE NORTH GAUTENG HIGH COURT, PRETORIA  
(REPUBLIC OF SOUTH AFRICA)

"F"

Case No: 24067/2010

In the matter between:

**BAREND PETERSEN N.O.**

**FIRST PLAINTIFF**

(In his capacity as Curator of Ovation Global  
Investment Services (Pty) Ltd and of Ovation  
Global Investments Nominees (Pty) Ltd)

AND

**ABSA BANK LIMITED**

**DEFENDANT**

---

**APPLICATION TO COMPEL IN TERMS OF RULE 35(7)**


---

**BE PLEASED TO TAKE NOTICE** that the Applicant will make application on 28 OCTOBER 2015 at 10h00 or as soon thereafter as counsel for the Applicant may be heard, for an order in the following terms

1. That the Respondent/Defendant be compelled to deliver a response to the Applicant's notice in terms of Rule 35(1), (6), (8) & (10) under case number 24067/2010 within 10 (ten) days after service of this order on attorneys of record for the Respondent;
2. That the Respondent be ordered to pay the costs of this application.
3. Further and /or alternative relief.

BE PLEASED TO TAKE FURTHER NOTICE that the affidavit of DENIS PATRICK LEAHY attached hereto will be used in support of this application.

SIGNED at PRETORIA this 22<sup>nd</sup> day of August 2013.

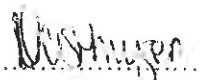
  
**STRYDOM & BREDEKAMP INC.**  
Attorneys for plaintiffs  
PARC NOUVEAU  
225 VEALE STREET  
BROOKLYN  
PRETORIA  
Tel.: (012) 460-1930  
Fax: (012) 460-8565  
Ref.: D LEAHY/evdh/HO0081

TO: THE REGISTRAR OF THE HIGH COURT  
PRETORIA

AND TO: **EDWARD NATHAN SONNENBURG**  
ATTORNEYS FOR DEFENDANT  
C/O **ELOFF BRINK ATTORNEYS**  
LORD CHARLES OFFICE PARK  
BUILDING A  
NORTH WING  
337 BROOKLYN ROAD  
C/O CHARLES STREET & BROOKLYN AVENUE  
BROOKLYN  
PRETORIA  
REF: AA VD MERWE/F1945

ELOFF BRINK PROKUREURS  
2013 -08- 23  
Sonder benadeling van regte  
Without prejudice

Received copy hereof in this the  
..... day of .....

 .....



**IN THE NORTH GAUTENG HIGH COURT, PRETORIA  
(REPUBLIC OF SOUTH AFRICA)**

Case No: 24067/2010

In the matter between:

**BAREND PETERSEN N.O.**

**FIRST PLAINTIFF**

(In his capacity as Curator of Ovation Global  
Investment Services (Pty) Ltd and of Ovation  
Global Investments Nominees (Pty) Ltd)

**JOHN ADRIAN LEVIN N.O.**

**SECOND PLAINTIFF**

(In his capacity as Curator of Ovation Global  
Investment Services (Pty) Ltd and of Ovation  
Global Investments Nominees (Pty) Ltd)

AND

**ABSA BANK LIMITED**

**DEFENDANT**

---

**FOUNDING AFFIDAVIT**

---

I the undersigned,

**DENIS PATRICK LEAHY**

make the following statement on oath:

1.

- 1.1. I am a major male attorney and Director of Strydom & Bredenkamp Inc., with address at Parc Nouveau Building, 225 Veale Street, Brooklyn, Pretoria.
- 1.2. I am also the attorney of record for the Applicant herein.
- 1.3. The facts herein fall within my own personal knowledge and are to the best of my knowledge both true and correct.

2.

- 2.1. The Applicant is BAREND PETERSEN N.O. a duly appointed curator acting in the following capacities:
  - 2.1.1 as Curator of Ovation Global Investment Services (Pty) Ltd in terms of an Order of Court granted on 2 March 2007 under case number 2197/2007 in the Cape of Good Hope Provincial Division of the High Court of South Africa;
  - 2.1.2 as Curator of Ovation Global Nominees (Pty) Ltd in terms of an Order of Court granted on 2 March 2007 under case number 2197/2007 in the Cape of Good Hope Provincial Division of the High Court of South Africa.

3.

A handwritten signature in black ink, consisting of a stylized, cursive script that is difficult to decipher. It appears to be a personal name or initials.

The Respondent is ABSA BANK LIMITED, a bank duly registered as such in terms of the Banks Act, No 94 of 1990, carrying on business from and with its registered office at Absa Towers East, Third Floor, 170 Main Street, Johannesburg.

4.

On 26 February 2013 a notice in terms of Rule 35(1) was served on the Respondent's attorneys of record in order for them to deliver their client's discovery affidavit. A copy of the notice is attached hereto as annexure "DPL 1".

5.

The TWENTY (20) days within which the Defendant was required to deliver its discovery affidavit lapses on 26 March 2013.

6.

On 7 June 2013 a letter was also addressed to the attorneys of record for the Defendant, once more requesting that they deliver their clients discovery affidavit, despite this no discovery affidavit has been delivered yet. A copy of the letter together with the proof of fax transmittal is attached hereto as "DPL 2".

7.

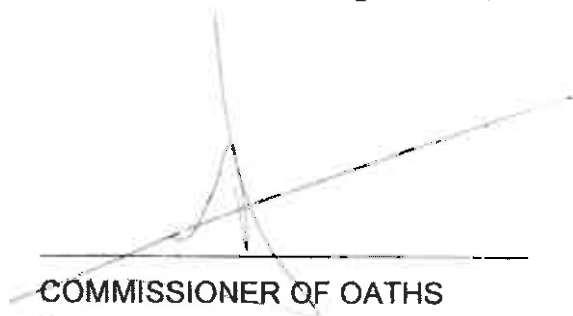
In the premises, the Applicant humbly requests that an order be granted as set out in the notice of motion.

  
D P LEAHY

I certify that the Deponent acknowledged that he knows and understands the contents of this affidavit, which affidavit was undersigned in my presence and certified at PRETORIA on this 21<sup>st</sup> day of August 2013. The Regulations



contained in Government Notice R 1258 of 21 July 1972, as amended by Government Notice R 1648 of 19 August 1977, have been complied with.

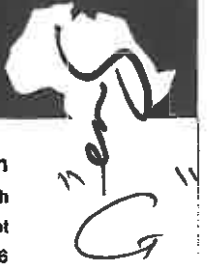
A handwritten signature in dark ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

COMMISSIONER OF OATHS

ROTHMERE LONDON  
ATTORNEY

23 BRIDGESIDE, KILNICK

A small handwritten mark or signature in the bottom right corner of the page, consisting of a few simple strokes.



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 Per fax: (012) 460 8565

20 September 2013

Dear Sir/Madam

**OVATION GLOBAL INVESTMENT SERVICES / ABSA BANK LTD**

1. The above matter refers.
2. We are currently in the process of finalising our client's discovery affidavit and locating the most appropriate representative of our client to depose to the affidavit. Given that our client is a large corporate organisation you will appreciate that it will take some time to arrange for the appropriate representative with sufficient knowledge of the matter to be able to attest thereto.
3. In the circumstances we kindly request an extension of four full business days within which to deliver the affidavit to you; that is, on or before Friday, 27 September 2013.

**YOURS FAITHFULLY**

Per:

*Edward Nathan Sonnenbergs*

**EDWARD NATHAN SONNENBERGS**