

# FSB Bulletin - Second Quarter 1999

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# **Mega exchange for SA**

By Bessie van der Lingen, Sub-editor, FSB Bulletin

To be able to compete successfully in a global and increasingly competitive financial marketplace, it is necessary to create a single, unified exchange.

The Executive Committees of the Johannesburg Stock Exchange (JSE), Bond Exchange of South Africa (BESA) and the South African Futures Exchange (SAFEX) approved a recommendation to merge into a single, unified exchange. This resolution is subject to the approval of the FSB, main and executive committees of the three Exchanges, the Minister of Finance and the members of all three Exchanges. The new exchange will be known as Newex and will adopt a new Constitution and rules. But why, how and when will this take place?

## **Why a merger?**

The proposed merger of the South African Exchanges follows the trend in structure of exchanges internationally. The Stockholm Stock Exchange was one of the first exchanges to integrate its equity and derivatives markets. Other European, Asian, Australian and North American Exchanges soon followed suit. The alliance between the London Stock Exchange and the Deutsche Börse is the first step to a proposed single European market for blue chip stocks. So why should South Africa follow their example?

The main aim of the integration of the exchanges is to ensure that the South African financial exchanges are efficient, cost-effective, secure, transparent and internationally competitive. The combined exchange will be the market of choice for trade in Southern African financial instruments and securities and will help to attract foreign investment to South Africa. Such an exchange will also be able to provide facilities for the markets in the wider South African region. The new exchange is further expected to create better surveillance, better efficiencies in trading and settlement and ultimately, lower costs.

## **Process**

The merger process will be undertaken in two phases. In phase one of the merger, the business and operations of the three Exchanges will be licensed in terms of both the Financial Markets Control Act, 1989 and the Stock Exchanges Control Act, 1985. It will list all the financial instruments and securities currently traded on the three existing Exchanges. There are a number of legal issues that must be first addressed in order to implement phase one. Once these issues have been resolved, the membership of each Exchange will be asked to approve the merger. During phase two it is intended that the single voluntary association should be transformed into a company. This company will operate in accordance with the provisions of the Companies Act, 1973.

The process of integration will be managed under the direction of two high-level committees, the Merger Steering Committee (MSC) and the Merger Working Committee (MWC). The MSC comprises of the Chairmen and Chief Executives of the three current Exchanges and will be responsible for determining the overall management of the merger process and its principles and policies. The MWC's main responsibility is to produce the merger prospectus. It comprises of management representatives of the current Exchanges

which will report back to the main committees of the Exchanges on its progress. The final merger proposal, which will include recommendations on the structure of the new Exchange, will also be submitted to the main committees before submission to the three memberships.

The MWC has established separate sub-working committees to address the functional processes required to complete the merger. Each sub-working committee has an approved mandate and checklist of priorities and must report back to the MWC on a weekly basis on their progress. The sub-working committees include surveillance, corporate communications, finance, premises, human resources, risk management, exchange structure, rules, trading and clearing and settlement.

## **Date**

It was not possible to have the necessary changes to legislation passed in the last session of Parliament. However, work on the merger is proceeding on the assumption that the legislation will be amended as proposed. Before the merger can take place, it must comply with the processes prescribed in the legislation. The members of the three Exchanges must still give formal approval to the merger. Once a prospectus has been compiled, the members will be requested to vote in favour of the new unified exchange. The target date for the merger is towards the end of 1999.

## **Building**

It was necessary to consider a move to modern premises in which the technological infrastructure supporting the use of state-of-the-art services can be provided effectively and efficiently. The building for the new Exchange is under construction on the corner of Maude Street and Gwen Lane in Sandton. The target date of its completion is September 2000.

## **FSB**

The FSB has no reason to object to the proposed merger and informal meetings have already been held. The FSB has also been invited to attend any merger committee meeting and has been involved in the rules, risk management, clearing and settlement working committees from the outset. The new mega exchange will benefit the South African economy as a whole. It will ensure greater efficiency, more effective use of resources and as a result increased capacity for greater volumes of business, as well as innovation and new business.

## **Sources:**

- Annual Report of the JSE, 1998
- Memorandum to the Committees of the three Exchanges, The Merger of the Three Exchanges: Where We Are Now, 21 May 1999.
- A Concept Paper for Members of BESA, the JSE and SAFEX Merger of the Three Licensed Exchanges in South Africa
- Newsletter for staff of BESA, JSE, & SAFEX, About the merger, Issue no 1, January 1999
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# Chairperson of FSB retires

By Bessie van der Lingen, sub-editor, FSB Bulletin

Dr Chris de Swardt, Chairperson of the FSB will retire at the end of June 1999. What achievements and highlights did he experience in his career, how does he view the future of the FSB and what are his future plans?

When one first meets Dr de Swardt, he immediately strikes you as a true gentleman. He is well-mannered and soft spoken, but make no mistake, an ambitious person who made it to the second most senior position in the South African Reserve Bank.

Dr de Swardt, who holds a Doctorate in Economics and a Masters degree in Statistics from the University of Pretoria, joined the Economics Department of the Reserve Bank as a university graduate. "Working for the Reserve Bank was a wonderful experience. I started my career in the Bank's Economics Department and eventually became the Head of that Department," he reminisces. Thereafter he was appointed as General Manager with the responsibility of Bank and Building Society Supervision, and at the same time he became the Registrar of Banks and Building Societies. In 1990 he was promoted to Deputy Governor.

One of the highlights during his term of office as Deputy Governor was the final implementation of the strategic plan of the newly established Bank Supervision Department. "This was a great challenge as a new legal framework for banking regulation and supervision, a new information base for supervision and appropriate supervisory practices had to be implemented," he explains. His successors, Dr Hennie van Greuning and Mr Christo Wiese completed this implementation. Another highlight was the successful reduction by the Reserve Bank of the high inflation rate through the application of a consistent monetary policy. "This was an important step in the achievement of broader financial stability," he says. He also views the reformulation of the Reserve Bank's mission and the achievement of public recognition of the need for central bank independence as further achievements of the Bank during his term of office as Deputy Governor.

Except for his responsibilities at the Reserve Bank, Dr de Swardt also chaired the FSB, the Policy Board for Financial Services and Regulation, the Financial Markets Advisory Board, as well as the Corporation for Public Deposits and the South African Bank Note Company. Policy Board and Financial Markets Advisory Board. The Government established the Policy Board for Financial Services and Regulation in 1993. The Policy Board's aim is to co-ordinate financial regulatory policy in South Africa. "Its success can be attributed to the effective harmonisation of financial regulation in South Africa with international principles, practices and standards," he explains. The Policy Board also completed the ground work for the introduction of financial conglomerate regulation and extensive market-conduct regulation in South Africa.

While Dr de Swardt chaired the Financial Markets Advisory Board, the Bond Exchange of South Africa was established and the Johannesburg Stock Exchange was reformed. In addition, the introduction of capital requirements in respect of securities positions for financial exchange members and banks was achieved. But what highlights did Dr de Swardt experience as chairperson of the FSB and how does he view the future of the FSB?

**FSB**

“The most rewarding experience as chairperson of the FSB was to be part of its development and growing sophistication as a financial regulatory and supervisory authority,” says Dr de Swardt. He views the completion of its formative phase at the end of its first five years of operation as a great achievement. “During this time much work had to be done. Organisational structures, physical and human resource infrastructures, operational systems, management structures, as well as supervisory arrangements had to be designed, implemented and tested. I give much credit to the first chairperson, Mr Justice Melamet, and the first Executive Officer, Mr Piet Badenhorst, who spearheaded this operation.”

Dr de Swardt also sees the rationalisation and optimisation of the operations of the FSB during the next three years as highlights during his term of office as chairperson. “This was an initiative of the Board of the FSB and was based on recommendations of management consultants,” he explains. The task of developing and implementing detailed strategic and operational plans was assigned to the second Executive Officer, Mr Rick Cottrell.

Other highlights include the quality enhancement of regulation and supervision by the FSB, which covered virtually all areas of the FSB’s regulatory and supervisory responsibilities. “Such enhancement is continuous, and based on current developments, will extend further into the future,” he adds.

The FSB’s responsibility as investment supervisor and regulator is in the process of being expanded. “When the intended new market-conduct regulation and subsequent supervision in this area, as well as the financial conglomerate area have been implemented, the basic framework for future financial regulation and supervision will be largely in place. If a single financial regulator and supervisor is to be established, the FSB will form a major part of such an organisation. I will miss participation in the further development of the FSB’s responsibilities,” he says.

## **Personal**

Dr de Swardt will initially relocate from Pretoria to Hermanus in the Western Cape. “This, in itself will be a time-consuming project and therefore I consider it as a cooling-off period. Thereafter I will be ready for involvement in new part-time responsibilities,” he says enthusiastically.

As Dr de Swardt had very little free time available, he now intends to focus more strongly on his personal interests. “I am looking forward to again participate in some outdoor activities such as hiking, tennis or golf, or pursuing bowls as a new challenge,” he says.

Dr de Swardt believes that one must do what has to be done with dedication. “I also try to live in a way that does not cause too many complications for my family members, friends and professional colleagues,” he adds.

“Financial stability, and more particular financial regulation, has become a major international issue and therefore financial regulators and supervisors have to comply with the new norms and expectations of a global community. My message to the FSB is to maintain the professionalism required to meet such standards in the interest of not only preserving financial stability in South Africa, but also in the international financial system.”

# New head for insider trading

By Bessie van der Lingen, sub-editor, FSB Bulletin

One only needs a few minutes in Gerhard van Deventer's company to realise that the newly appointed Executive Director of Insider Trading just fits the bill. He is young, energetic and very enthusiastic about his new task at the FSB.

## Experience

Born and bred in Hermanus, Gerhard went to study law at the University of Stellenbosch. "I have always been interested in the legal field," he says. He was first public prosecutor at the Roodepoort Magistrate's Court and then candidate attorney at De Wet and Van der Watt Attorneys. "Here I gained a lot of experience in civil and criminal litigation and the drafting of contracts and other legal documents," he says.

In 1991 Gerhard was admitted as advocate and then joined the Office of the Attorney-General where he worked at the Commercial Crime and General Prosecuting Divisions. "My duties included the investigation and prosecution of serious commercial crimes. I also gave guidance and direction to forensic auditors mandated by the SAPS to audit and testify in commercial crime cases." During his time at the Attorney-General he was JSE and SAPS Commercial Crime Unit liaison officer.

Gerhard joined the FSB's Inspectorate in August 1995 and since then has never looked back. "As inspector I enjoyed the forensic investigations and litigation support most of all. I also love court work, especially actual prosecution and cross examination," he says. This experience links up perfectly with his new task at the FSB.

## Insider trading

"I am really happy about my promotion. It is very exciting to work in a new field and start a new department," says Gerhard. He views his greatest challenge as changing the perception that legal action against insider traders cannot be successful. "I cannot wait for the first successful prosecution," he adds.

As Head of Insider Trading he has lots of plans up his sleeve. "My immediate plans are to contribute to improve investor confidence in the South African markets. I also want the department to properly concentrate on investigating allegations of insider trading and to utilise sound forensic techniques," he explains. His team will further minimise the window of opportunity for insider trading by issuing properly researched rules.

"We are currently doing a research project which includes a comparative study of other jurisdictions. This project will be of great benefit to our department," says Gerhard. He is also very thrilled about the interrogation room, recently installed at the department as part of the investigation process.

The FSB and the Johannesburg Stock Exchange (JSE) are working closely together to ensure effective supervision. "A number of insider trading cases are already in the process of being investigated," he explains enthusiastically.

But how does he view the future of the insider trading department? "I would like the department to reach the stage where it can concentrate on preventing insider trading by having preventive measures in place, rather than picking up the pieces of an investigation after the event."

Gerhard is very pleased with his new staff members. "It is wonderful to start a new department with such a keen and dedicated staff component." His staff reflects the multi-disciplinary skills necessary to fulfill the task of effectively combatting insider trading. The department boasts with legal, as well as financial experts.

## **Personal**

When Gerhard is not busy combatting insider trading, which is more often than not, he is busy renovating their new house. "I love being creative and I especially like to work with wood," he says. Gerhard also enjoys outdoor activities and is very fond of scuba diving and game viewing. "If I cannot head off to the ocean or bush, I will watch wildlife documentaries on television." He also likes to spend time with his eight year old son. Gerhard feels strongly about treating people according to their character and not position. He likes happy people, cats and red wine and dislikes smooth operators and small dogs.

Gerhard not only has the experience, skill, and knowledge to make a great success of his career - his dedication and enthusiasm will definitely bring him to the top.

## **Members of Insider Trading Directorate appointed**

The Minister of Finance, Mr Trevor Manuel, has announced the appointments of the members of the new Insider Trading Directorate in terms of the new Insider Trading Act, 1998 in March. The Directorate is established as a committee of the FSB and will be empowered to institute civil proceedings. The Directorate will give general direction to the combatting of insider trading.

The Directorate had its first meeting on 6 April 1999. Mr Rob Barrow, Deputy Executive Officer of the FSB has been appointed as chairperson of the Directorate at the meeting.

The members which the Minister appointed are: Mr WF Urmson, Director: Surveillance, Johannesburg Stock Exchange (JSE); Mr SA Rees, representing the South African Futures Exchange (SAFEX); Mr ST Lawless, Chief Executive Officer, Bond Exchange of South Africa (BESA); Mr EA Moola, practising attorney; Me MMT Romano, Investment Research Analyst: Rand Merchant Bank Asset Management; Mr JC Stassen, Chief Corporate Legal Advisor: Old Mutual; Mr L Mali, General Manager: Banking Council of South Africa; Mr T Mosololi, Partner in charge, Gobodo Incorporated Chartered Accountants (SA); Mrs Gobodo, chartered accountant; Mr UP Pillay, Managing Director of Coastal Group Ltd.

The alternate members are: Mr SA Davies, Manager: Surveillance, JSE; Mr R Crosby, General Manager: Finance, SAFEX; Mr GA Brookes, Treasurer and Secretary, BESA; Mr C Jaffe, Chairman of the Securities Regulation Panel; Mr P Goldhawk, Director: Financial Advisory Services: Price Waterhouse Coopers; Mr AD Dixon, General Manager: Finance, Guardian National Insurance Company; Ms Anne Larter, Legal Consultant, Standard Bank of South Africa Ltd; Mr Y Waja, Tax and Business Consultant; Dr H Falkena, Head: Research: Absa Bank.

# **New Bill to control and regulate Collective Investment Schemes**

The first legislation for the regulation and supervision of the unit trust industry was promulgated in 1947. It has been amended several times to keep abreast with developments within the industry and investors' needs. To enable the local industry to become globally competitive and to upgrade regulation and supervision, it has become necessary to review the current legislation.

The relaxation of exchange control and the globalisation of international financial markets have resulted in an increase in the available investment options to local investors in foreign jurisdictions. This has furthermore been expanded by the numerous foreign institutions which are now actively soliciting investments from local investors. There is no quantitative data to show cross border market penetration into South Africa by value. The current structure limits unit trusts to trust based vehicles only, which hinders the local industry to compete efficiently with foreign competitors. The proposed Bill not only sets a framework for a diversification of trust based collective investment schemes by allowing for more competitive contract and company based collective investment schemes, but also for other types of financially based collective investment schemes that are not currently regulated.

The combination of trust based structure, exchange control and taxation has also driven South African companies to establish off-shore investment companies. This has resulted in capital and skill being lost to South Africa.

It would be sensible to make it worthwhile for all these activities to be carried out in South Africa which could reverse the impression that South Africa is declining as an investment destination.

How does one go about reviewing legislation? The Policy Board for Financial Services and Regulation conducted a survey of opinions of members of the unit trust industry, the South African regulatory authorities, as well as other related institutions. The Board also reviewed the legislative and regulatory approaches of selected international dispensations and the principles thereof, as defined by the International Organisation of Securities Commissions (IOSCO). The Association of Unit Trusts (AUT) held workshops on the topic and in consultation with the FSB, compiled a document containing the proposals which set out the principles within which the drafting of the legislation could take place. The consulting arm of worldwide accountants Deloitte & Touche's Financial Institutions Team and attorneys Maitland and Company also gave their specialist input.

The FSB and AUT prepared the draft legislation. The principles contained in the Bill provide for:

- it to be structured as a "parthenon" with many different pillars of which existing unit trust schemes, open-ended investment companies and foreign collective investment schemes are the first pillars;
- the control, regulation and supervision of all financially based collective investment schemes including unit trust schemes and all foreign and local collective investment schemes wanting to do business in South Africa;
- the appointment of a representative advisory committee to advise the Minister and the registrar on the business and supervision of collective investment schemes;
- the recognition of an industry association which may be entrusted with duties and powers for the self-regulation of the conduct of its members;
- risk based capital requirements for collective investment schemes;

-comprehensive disclosure and additional requirements to further protect investors; and  
-independent custodianship of the assets representing the interests of investors.

A copy of the Bill was distributed to the management companies of all unit trust schemes and the Association of Unit Trusts of South Africa for comment. The Bill was discussed at a workshop of the industry towards the end of 1998. Very valuable comment was received.

The draft Bill was subsequently released for wider consultation with 31 May as the last day for submission of comments. Two workshops were also held during May in Pretoria and Cape Town to discuss the Bill. The Bill deals with several important issues.

It is internationally accepted that innovation is not fully possible within a trust based format. The advent of open-ended investment company schemes and possible introduction of contract-based schemes will allow much greater innovation in the collective investment schemes arena. Many such products already exist internationally and are sold to local investors. They are also used off-shore by local companies but cannot be offered by South African schemes presently. It will benefit South Africa's balance of trade and employment prospects if these products are designed locally and sold in domestic and foreign markets.

Disclosure of relevant information to enable an investor to make an informed investment decision is of uttermost importance. Amongst issues to be disclosed are the structure of a scheme, investment objectives of a fund, the basis and frequency of calculation of prices, charges and commissions paid by investors, distribution of income and different risks involved. Compliance with proper disclosure will continuously be closely monitored as part of the supervisory process.

The AUT and the FSB believe that the proposed legislation will benefit the South African economy.

## **FSB releases Financial Advisers Draft Bill**

By Franso van Zyl, Head: Research, FSB

The Financial Services Advisers Bill, 1999 proposes to regulate the carrying on of business as an adviser to clients regarding financial products.

Proper regulation to protect the interests of users of financial services is a necessary element in the healthy development of the financial services industry. Everyone should know that they are doing business within a properly regulated system where fraudulent and dishonest conduct is prohibited and high standards of conduct are expected and obtained.

The present regulatory system is often criticised as it does not effectively regulate the activities of intermediaries who offer their "professional" services as financial advisers. The lack of effective regulation has occurred because of the gap in statutory controls. The result is that there is currently very little protection available to the clients of financial advisers. Current protection is mostly only in terms of common law which has proved to be ineffective.

At the initiative of the Policy Board for Financial Services and Regulation, the FSB has drafted the new Financial Services Advisers Bill. This Bill was previously referred to as the Retail Investment Services Bill. The new Bill provides for a number of regulatory measures in relation to financial advisers, such as fit and proper testing of financial advisers and compliance with codes of business conduct by advisers.

The Bill also proposes that authorised financial advisers must carry out specific duties in the

course of conducting their business, such as written confirmations of advice given to clients and the maintaining of certain records.

The new Bill establishes an office of Executive Chairperson and also provides for the Executive Chairperson to appoint inspectors to monitor the affairs of financial advisers and of their representatives. The Executive Chairperson may apply to the High Court for orders restraining unlawful conduct by financial advisers and for compensation orders in favour of persons who suffered damage or losses in consequence of refusal or failure to comply with Court orders.

The FSB circulated the Draft Bill for comment to all interested parties in March. The public was also informed of the new Bill by way of media releases. Several workshops were held to receive inputs on the Bill. Very valuable inputs were received.

The new Financial Advisers Bill will not only protect clients who make use of financial advisers, but will also benefit those who provide financial services.

## **Slow shift to customer focus locks retail financial services in neutral**

By Hans Venter, Corporate Communications Consultants

Although financial services executives know how critical customer focus is to their future success, few have taken steps to become customer-centric organisations.

Gear up or give up the race for customers! This is the message of a global study by Deloitte Consulting about the challenges and opportunities facing retail financial service firms. The study was based on a written survey and in-depth interviews with 133 senior executives in the largest retail financial services institutions around the world.

“Retail financial services institutions are well aware of the challenges presented by globalisation, convergence and technology. They are also planning how to survive in the current environment of increased competition,” says Simon Gifford, partner at Deloitte Consulting. “However, this study shows that success is being compromised by the failure to adopt a strong customer focus.”

Companies throughout the world are implementing a number of strategies, such as expanding internationally, introducing new products and delivery channels to secure a competitive position in the future of retail financial services. Yet, a large percentage of company executives are disappointed by the results of these efforts. They also lack confidence in their ability to meet the needs of customers - three-quarters of the respondents believe that their greatest challenge is to access customer knowledge and integrate their delivery channels.

The majority of retail financial firms know what they should do to strengthen their customer focus. “The greatest weakness shared by retail financial services firms is not weak strategies, but weak implementation,” explains Simon. He adds that it is not easy to implement customer focused business strategies. “Acting in a customer-centric manner is more than marketing slogans, speeches and company directives. It requires the transforming of a firm - from its business processes and information systems to its corporate culture - to focus on its customer relationships.”

So which challenges should one meet to become more customer-centric? “There are three important challenges to meet: customer knowledge, integrating delivery channels and developing a customer-centric culture,” adds Simon.

## **Customer knowledge**

Seventy-five percent of the respondents feel that they need to be more knowledgeable about customers. Customer databases are currently aligned on a product and transaction basis. Companies need to integrate these databases by adding more customer-specific information. This will provide a unified view of existing customer relationships. "If individual customers are segmented according to their profitability, one can easily identify the right customer for the original goal," says Simon.

There are technology tools which assist in the development of this knowledge, such as data mining and external customer databases. Although 55 percent of respondents plan to use these tools, only 19 percent use them extensively.

## **Integrating delivery channels**

While 76 percent of executives feel that the integration of delivery channels is important for strengthening customer relationships, only 31 percent are highly confident that their current distribution mix anticipates customer needs. Seventy-four percent of respondents reported that their organisations do not offer incentives for customers to use less expensive distribution channels.

Financial services institutions need to improve their delivery channels to enhance their service to highly profitable customers. This will allow them to reduce the cost of serving less affluent customers. "Companies need to offer the full range of integrated delivery channels just to meet existing customer needs," adds Simon.

While only 19 percent of industry executives rate the use of electronic delivery as a very important customer channel, 63 percent believe it will be very important in five years' time. Nevertheless, a majority of companies still have no formal plans to introduce on-line retail financial services.

## **Customer-centric culture**

Thirty-eight percent of respondents believe that developing a customer-centric business culture is a critical management challenge. According to the study, 52 percent of the executives feel that their organisations are slow to adapt to new delivery channels such as the Internet, while 43 percent believe they are slow to introduce new products.

Financial services institutions need a profound understanding of their customers and a customer-response capability that is instantaneous and of the highest quality to become truly customer-centric. They also need to fully understand the range of delivery channels available. Until now, few companies have shown much success in achieving these goals and most have been unable to implement strategies that provide superior results.

"To achieve these objectives and meet the challenges posed by increased competition, retail financial services companies need to get on the fast track to becoming customer-centric organisations," stresses Simon. "The race to win customers will only be won by those organisations with the right people, right technology and right leaders who can drive an integrated customer focus throughout the firm."

## What a loss to the FSB

By Bessie van der Lingen, sub-editor, FSB Bulletin

Francois Jooste, Head: Legal and Policy and Herman Schoeman, Head: Short-term Insurance are leaving the services of the FSB. The FSB Bulletin went to interview these two sought after heads.

Ask anyone at the FSB how they view Francois Jooste and you will receive remarks such as: friendly, down to earth, a great sense of humour, brilliant, intelligent, patient, fair, hard-working, relaxed, a broad general knowledge and a wide variety of interests. "Francois has practised an open door policy in the true sense of the word. He will always find time for staff members and the accompanying joke of course, no matter how busy he is," says Carien Breytenbach, his secretary.

Francois is going to Momentum Administration Services at the end of July. He has been with the FSB for almost eight years. "I started my FSB career at Long-term Insurance whereafter I became Head: Research and then Head: Legal and Policy."

He sees the highlights in his career as the two Insurance Acts that went through Parliament, as well as the civil enforcement remedies that have been brought in and utilised. "But what I enjoyed most of all while working at the FSB was the constant changes and the total renewal that took place. I just love the pace and tempo at which one works at the FSB. I also thrived on the variety of my tasks," he says.

Although I will honestly miss the people at the FSB, I am really looking forward to face the challenges of my new job. Legally and compliance wise my experience at the FSB will link up nicely with my new task," he adds.

Francois enjoys all sorts of activities, "especially those that take place outdoors," he remarks. "That is why I have chosen to live on a farm." He has horses and ostriches and farms granadillas. Francois is also a keen fisherman and diver and a very happy camper.

Herman Schoeman is leaving the FSB at the end of May to join Guardrisk Insurance in Johannesburg. "Guardrisk is a specialised short-term insurer in the Forbes Group," explains Herman. He will be their new General Manager: Volume Business on EXCO level, and after six months designate Executive Director.

Herman has been with the FSB for more than eight years. "I started in the Short-term Insurance Department as cadet controller which is the equivalent of today's analysts," he says. And now he will leave the department as its head!

Herman views the highlights in his career as working with a wonderful staff component. "They are a great bunch of people and were a daily highlight in my career." And the feeling is mutual. "It was great to have Herman as a boss," says Fransisca Erasmus, his secretary. "He is very professional, a real go-getter - the sort of person that everyone respects." Herman's other highlights in his career include the introduction of the new Short-term Insurance Act, 1998 and the strategic planning session which he facilitated for the FSB.

"What I enjoyed most at the FSB was the tremendous wide scope of work. I became involved in highly technical issues, as well as macro economic or industry matters. Although I will miss my work at the FSB, I see my new task as very exciting and challenging. I believe that my experience in supervising the industry will assist me in most of my tasks at Guardrisk. I was also very fortunate to make an extremely wide network of contacts, especially in the greater SADC environment," he explains.

Herman is a great family man. "That is why I do not play golf," he answers jokingly when

asked about his interests. “Whenever I get the chance, I go camping with the family. My favourite spots are Pilanesberg Game Reserve and Scottburgh.” Herman is also a rugby coach and referee at the different schools in the Moot region.

There is no doubt that the FSB will miss the presence of Francois and Herman. We wish them all of the best and lots of success in their new careers.

## **Application by Association of Unit Trusts dismissed**

The Association of Unit Trusts (AUT) applied for a declaratory order regarding the correct interpretation of section 23 of the Unit Trusts Control Act, 1981. This application has been dismissed with costs in the Pretoria High Court in May. The application followed a disagreement between the Registrar of Unit Trust Companies and the AUT regarding the interpretation of section 23.

The AUT contended that the word “or” as used in section 23(2) of the Act was intended to be used in its literal sense and that the Registrar of Unit Trusts had a discretion to allow amendments to unit trust deeds without obtaining the consent of unit trust holders. The Registrar of Unit Trust Companies is of the view that such an interpretation is not correct and that it will be to the detriment of unit holders.

In giving judgment, the Pretoria High Court dismissed the AUT’s application that the word “or” should be given a strict literal interpretation and that the word “or” must be read as “and”. The effect of this judgment is that any Unit Trust Management Company who wishes to amend their trust deed must first seek the content of unit holders by complying with its Trust Deed which could entail conducting a ballot.

## **FSB attends securities market development seminar in the USA**

By Tshivhangvaho Mphanama, Assistant Manager: Financial Markets, FSB

Tshivhangvaho Mphanama, assistant manager at the FSB’s Financial Markets Division was selected to participate in the Securities Exchange Commission’s 9th Annual International Institute for Securities Market Development Seminar in Washington. He shares this experience with the FSB Bulletin.

It was a great honour to be selected to participate in this seminar. It was also a wonderful learning experience as 120 delegates from different countries exchanged ideas, viewpoints and information regarding securities markets’ development.

Individuals in senior policy making positions from emerging markets countries, the World Bank, International Monetary Fund and universities took part in discussions about the development, operation and regulation of capital markets. The programme included a full schedule of lectures, small workshops, as well as sufficient time to discuss specific areas of interest with the Securities Exchange Commission’s (SEC) staff.

Different topics were addressed and I especially found the information on the harmonisation of the markets very valuable. The topics included policy and legal frameworks for capital market development, an overview of market regulation and enforcement, financial statement and disclosure requirements, clearing and settlement systems, securities rating agencies, as well as investor education.

Following the programme, delegates could spend up to one week as interns with self-regulatory organisations, stock exchanges, brokerage firms, or banking firms. Although South Africa did not participate in the internship programme, I believe that this programme provides good practical insight.

Part of the SEC's programme included presentations by the delegates on their respective countries' regulatory systems. For purposes of the presentations, delegates were divided into smaller groups. In this way we have not only informed one another about our country's security markets and regulatory systems, but also discussed areas of mutual interest. Compared to the other countries represented at the seminar, South Africa's financial markets and regulatory structure can be considered as relatively advanced.

Although the SEC's securities market supervision model is an excellent model, one cannot apply it to all emerging economies. The FSB can, however, consider to adopt certain aspects of the model. The SEC regards full disclosure by the industry of utmost importance. Therefore we can consider to take steps to introduce an improved disclosure regime for the industry. The SEC regards insider trading as a very serious violation.

Attending this seminar was a very valuable experience. I have not only built relationships with foreign regulators and supervisors, but also gained knowledge that can add value to the FSB.

## **E-mail: A double-edged sword for financial services firms**

Companies who think that e-mail is a harmless form of communication within the workforce need to reconsider their belief. Since the promulgation of the Insider Trading Act, 1998, financial services firms have to step up e-mail security or otherwise be left vulnerable to insider trading offences.

The new and improved Act grants the FSB wide spread powers to watch over financial services firms, and prohibits individuals who have inside information relating to securities or financial instruments from dealing in them. The FSB is able to subpoena all records, including telephone calls, fax and e-mail records. Both civil and criminal prosecutions are provided for, with steep penalties of up to R2m, ten years imprisonment, or both.

E-mail is a cost-effective, highly efficient means of communication, yet, if it remains unregulated, it is an easy vehicle for leaking privileged information or data that can have a material effect on the share price. The explosion in e-mail has made the problem increasingly urgent. Ineffective measures to date have been to prohibit employee access to e-mail, to simply ignore outgoing e-mail messages, to have a cadre of reviewers monitor outgoing messages, or to use a passive form of automated monitoring.

The law in the UK and the USA obliges brokerages to record all e-mail messages leaving or coming into the company and make them retrievable for a period of three years. International brokerages are therefore forced to find solutions, the most common being to implement technology that scans all e-mails using a context sensitive pattern matching engine. The FSB is looking to align the SA law with regulations that stem from international countries and SA brokers have to acknowledge the danger of illegal insider trading via e-mail.

As telephone messages can be stored and recorded easily, brokerages in SA need to find an effective, efficient way to monitor their e-mail and reap the many rewards that it has to offer, while avoiding illegal insider trading.

## **The books say**

The Legal Nature of the Unit Trust by Kam Fan Sin, 1997

The Legal Nature of the Unit Trust is a valuable contribution to understanding the British law relating to unit trusts. This book is the first to provide a detailed analysis of the unit trust from a legal perspective. The author examines the history of unit trusts, the trust and constitution of a unit trust, the character of unit trust relationships, the obligations of the trustee and manager, as well as the nature of units as personal properties.

The Legal Nature of the Unit Trust is of academic, as well as practical relevance. It is available from Oxford University Press, Great Clarendon Street, Oxford, OX2 6DP.

Pensions Pocket Book 1999 by NTC Publications Limited in association with Bacon & Woodrow

The Pensions Pocket Book 1999 is a concise and very valuable book to all those who work in the pension fund industry. Although it is based on the United Kingdom's legal system, it will still be of benefit to South Africans. The contents include demographic and employment data, background to pension schemes, UK social security benefits, social security and other retirement benefits overseas, investment data, UK legislation relevant to pension funds, approved occupational pension schemes, personal pensions, contracting-out, leaving service benefits, pension scheme valuations, disclosure of pension scheme information, etc.

The Pensions Pocket Book 1999 is available from NTC Publications Ltd, Farm Road, Henley on Thames, Oxfordshire RG9 1EJ, UK.