

Market Notice

Number: A1445A
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Update on Consumer Protection Act No. 68 of 2008

Member firms are advised that the Department of Trade and Industry (“**dti**”) has granted an exemption to the securities services industry, regulated in terms of the Securities Services Act, 2004 (“**SSA**”), from various provisions of the Consumer Protection Act 2008 (“**CPA**”) effective retrospectively from 1 April 2011 (the “**exemption**”). A copy of this exemption as reflected in Government Notice No. 533 published in Government Gazette No. 34400 dated 27 June 2011 is included with this bulletin.

A high-level interpretation of this exemption reveals the following –

- The exemption has been granted in terms of section 5(4) of the CPA and is intended to exempt the securities services industry regulated under the SSA from specific provisions of the CPA.
- Activities of the securities services industry will continue to be regulated in terms of the SSA, and JSE members remain bound by the provisions of the SSA, the JSE Rules and directives.
- In respect of activities not regulated under the SSA, the protections offered by the CPA will remain applicable to individuals and to juristic persons falling below the threshold of R2m (in respect of both annual turnover and asset value).
- The right to a cooling-off period where a transaction results from direct marketing, a consumer’s right to return goods under certain circumstances and the rights of consumers with respect to delivery of goods or services are all covered under the exemption.
- The specific terminology and language utilised in agreements particular to the securities services industry is acknowledged and an exemption is granted from the plain language requirements under section 22 of the CPA.
- Various provisions of the CPA dealing with general standards of marketing, catalogue marketing, bait marketing, negative option marketing and the like fall within the exemption. Members are reminded, however, of the SSA provisions regarding undesirable advertising and canvassing in respect of securities.
- The exemption extends to sections 48 – 52 of the CPA. These sections include amongst others the general prohibition on unfair, unreasonable or unjust contract terms, specific notice requirements for certain terms and conditions and certain prohibited terms and conditions. This exemption recognises the limitation of liability provisions of the SSA.
- The exemption extends to the whole of Chapters 3 and 6 of the CPA which deal with the protection of consumer’s rights and the enforcement of the CPA. Accordingly, the existing dispute resolution mechanisms under the SSA will apply – a complaint or dispute with respect to “securities services” should be channeled via the JSE Complaints & Disputes Scheme (the JSE Ombud scheme registered under the Financial Services Ombud Schemes Act, 2004 (“**FSOS**”).



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Alternate Directors: JH Burke, LV Parsons

Members should consult their professional advisors regarding the specific impact of this exemption on their individual businesses, and are reminded to take appropriate steps to ensure their compliance with the CPA in respect of business activities not falling within the CPA exemption.

Members can access copies of the CPA and the regulations on the dti website www.dti.gov.za.

For CPA queries relating to the JSE, please contact Louis Cockeran (louisc@jse.co.za) or Graeme Brookes (graemeb@jse.co.za).

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