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

Case No: 12756/09

In the matter between:

ELIZABETH YVONNA ZERA

Applicant

and

BIZ AFRICA 1332 (PTY) LTD

(Registration No. 2001/006894/07) t/a

KING FINANCIAL HOLDINGS (PTY) LTD

Respondent

AFFIDAVIT

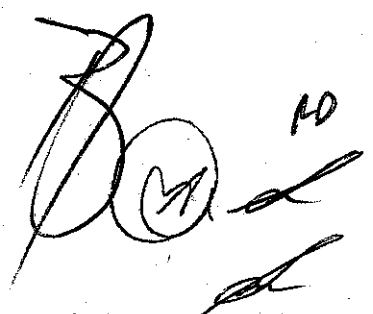
I, the undersigned,

GERMAN EMMANUEL ANDERSON

do hereby make oath and say:

INTRODUCTION

1. I am a Deputy Executive Officer of the Financial Services Board (the FSB), a statutory body created by the Financial Services Board Act, No. 97 of 1990 (the FSB Act), which operates countrywide as an organ of State, with its head office at 446 Rigel Avenue South, Erasmusrand, Pretoria.



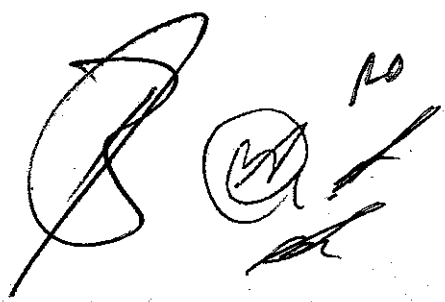
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2. The FSB's primary function is to oversee the activities of financial institutions (other than banks) and to exercise supervision over the compliance with laws regulating financial institutions and the provision of financial services, as defined in the FSB Act.

3. As a Deputy Executive Officer of the FSB, I am the Deputy Registrar of financial services providers and fall within the definition of "Registrar" in the Financial Advisory and Intermediary Services Act, No. 37 of 2002 (the FAIS Act). I am a member of the Executive of the FSB and my responsibilities include the FAIS Division of the FSB which exercises supervision over financial services providers, as contemplated by the FAIS Act.

4. As appears further below, the Respondent in the application under this case number (which should in fact be cited as King Financial Holdings Limited following the conversion of the company to public company with registration number 2001/006894/06) (I shall henceforth refer to the Respondent as **HOLDINGS**) is part of a group of companies which engages in the business of providing financial services and more particularly intermediary services in respect of the marketing and sale of financial products as defined in the FAIS Act ('the King Group'). One of the subsidiaries of **HOLDINGS** and a key player in the financial services business of the group, is A&S King Makelaars (Pty) Ltd trading as King Financial Services (with registration no. 2006/012764/07) (**SERVICES**). **SERVICES** was, until 16 July 2009, an authorised financial services provider in terms of the FAIS Act and its supervision falls within the ambit of my responsibilities at the FSB.

5. It follows that I bear knowledge of the facts contained in this affidavit as they relate to the affairs of **SERVICES**. I have also come to know about the involvement of **HOLDINGS** and other companies in the King Group in the financial services business through an investigation which was carried out by the FSB's Inspectorate Department, and which is dealt with in this

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affidavit.

6. The purpose of this affidavit is to place on record the attitude of the Executive Officer of the FSB (the Registrar) towards the proposed winding-up of **HOLDINGS**. As already stated **HOLDINGS** was an integral part of the financial services business of the King Group and is the holding company of **SERVICES** and as such an associated institution of **SERVICES** as contemplated in section 1 of the Inspection of Financial Institutions Act, No. 80 of 1998 (the Inspection Act).

INSPECTION REPORT

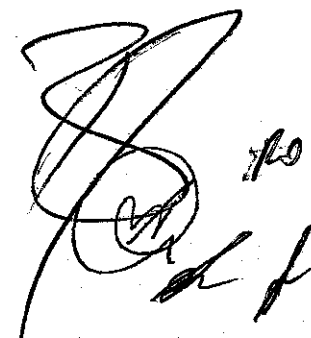
7. **SERVICES** was authorised by the Registrar as a financial services provider (FSP) with effect from 30 September 2004. It was authorised as a category I FSP within the meaning of the relevant regulations passed under the FAIS Act which enabled it to give advice and to render intermediary services in relation to a wide category of financial products, including Securities and Instruments: Shares.
8. "Intermediary service" is defined in the FAIS Act as meaning "...any act other than the furnishing of advice, performed by a person for or on behalf of a client or product supplier -
- (a) the result of which is that a client may enter into, offers to enter into or enters into any transaction in respect of a financial product with a product supplier; or
- (b) with a view to -
- (i) buying, selling or otherwise dealing in (whether on a discretionary or non-discretionary basis), managing, administering, keeping in safe custody, maintaining or servicing a financial product purchased by a client from a

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product supplier or in which the client has invested;

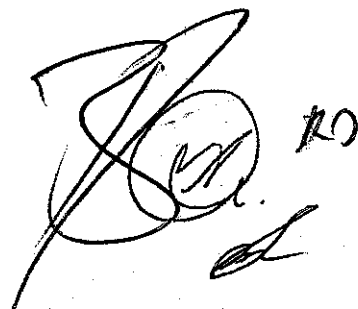
- (ii) collecting or accounting for premiums or other moneys payable by a client to a product supplier in respect of financial product; or*
- (iii) receiving, submitting or processing the claims of a client against a product supplier."*

9. In terms of its licence conditions **SERVICES** was not authorised to render any financial service in respect of the product category Securities and Instruments: Debentures and securitised debt. As appears below, an inspection in terms of the Inspection Act of revealed that **SERVICES** did render such service in respect of this product category and thus contravened its licence conditions.
10. Following the failure by **SERVICES** to submit required statutory audit reports and financial statements, the Registrar, on 12 December 2008, instructed an inspection into the affairs of **SERVICES** in terms of the Inspection Act, by a team of experienced inspectors of the FSB.
11. The inspection was extensive and complex. The scope of the inspection was to ascertain whether **SERVICES** was complying with the provisions of the FAIS Act as far as its operations as an authorised financial services provider were concerned. The scope of the inspection was subsequently extended to investigate the businesses of **SERVICES'** associated institutions.
12. On 9 July 2009 the inspectors produced a written report of their findings on the financial services business of **SERVICES** and its associated institutions. These institutions included **HOLDINGS** and another company, Autumn Star Trading 96 Limited t/a King Property Finance

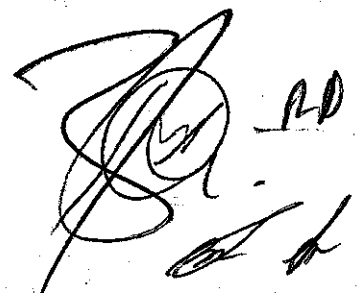
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(**KING PROPERTY**). A copy of the final inspection report, under verification of a confirmatory affidavit by Shirene Fraser, the lead inspector and co-author of the report is attached marked "**GA1**". I shall henceforth refer to this inspection report as "the report" and deal with the factual background of this matter by reference to what is contained therein. The annexures to the report have been excluded in order to avoid prolixity, but will, if required, be made available to the Court at the hearing of the matter.

13. The conclusions of the inspectors are set out towards the end of the report (on pages 78 to 80). Their recommendations to the Registrar are briefly stated in the final paragraphs of the report on pages 80 to 81. One of the recommendations was that the Registrar should consider exercising his powers in terms of sections 5 and 6 of the Financial Institutions (Protection of Funds) Act 28 of 2001 (the FI Act). Section 5 of said Act provides for the appointment of a curator to take control of the business of an institution. In light of subsequent events and for the reasons set out in this affidavit, I have subsequent to discussion with senior officials of the FSB, formed the opinion that such course of action is not an appropriate one. The inspectors also recommended that the Registrar withdraw the FSP licence of **SERVICES** in terms of the FAIS Act. This was duly done on 16 July 2009.
14. The King Group is effectively managed and owned by three brothers, Adrian King, Paul King and Stephen King. Adrian King founded **SERVICES** during January 1996. The other two brothers joined the company during 1997 and 2001 respectively. At the outset **SERVICES** was a financial services company that provided intermediary services in respect of mainly insurance products. During 1997 **SERVICES** commenced offering investments in commercial and residential properties to its clients.

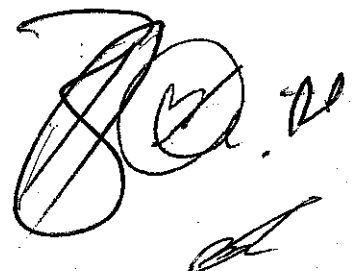
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15. Whilst the properties initially marketed by **SERVICES** were developed by independent property developers, **SERVICES** subsequently decided to undertake its own property developments.
16. The strategy implemented by the King Group was to purchase and develop properties which it registered in one of its subsidiary companies. **SERVICES** was used to market and sell these investments that were owned by the King Group. The financial products which **SERVICES** offered to its clients were shareholding, shareholder's loans and investment products in the subsidiary companies.
17. **HOLDINGS** is the holding company not only of **SERVICES**, but of all the subsidiary companies that held the properties to be developed. The first offer of shares by the King Group was done (through **SERVICES**) in **KING PROPERTY** during 2004. The King Group subsequently also marketed and sold (through **SERVICES**) shares in a number of other subsidiary companies, referred to as the Edrei Investments in the report by virtue of the names of the subsidiary companies. The structure of the Edrei investments was similar to that of **KING PROPERTY** and as such the report deals with the structure of the **KING PROPERTY** transactions only.
18. The nature of the **KING PROPERTY** transactions was that shares in **KING PROPERTY** were offered to the public. Prospective investors concluded an agreement for the sale of shares and bought one share in **KING PROPERTY** for R1 from **HOLDINGS**. The purchase was "inseparably linked" to a compulsory loan account of at least R100 000 as a shareholder's loan.
19. The money raised by loan account was to be invested in a Corporate

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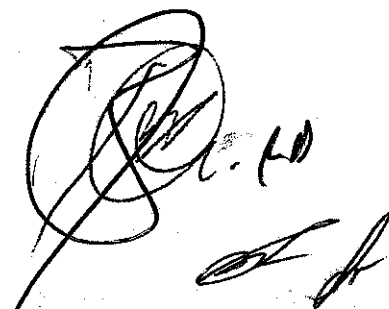
Savings Account administered by **HOLDINGS** with Nedcor Bank, unless such funds were required by **KING PROPERTY** for investment in the development of immovable property. **KING PROPERTY** was entitled, but not obliged to utilise the monies raised by loan account to invest in immovable property. Interest was payable by King Property to shareholders on the balance of their loan accounts at the rate of interest payable by Nedcor Bank of South Africa "on the Corporate Saver".

20. A "bonus interest" of up to a maximum of 2.5% per month would become payable to investors if declared by the directors of **KING PROPERTY**, in the event of **KING PROPERTY** successfully investing in immovable property. Shareholders were thus potentially entitled to receive 30% interest annually on their investments.
21. All of the property developments took place in subsidiary companies in the King Group. Money received from shareholders was transferred by **KING PROPERTY** to the subsidiary companies by means of "unsecured inter-company loans". Although **KING PROPERTY** undertook to take all reasonable steps to secure any investment made in immovable property by registering a second bond in its favour over all applicable properties, the inspectors were unable to find proof that any bonds were registered in favour of **KING PROPERTY** over any of the properties held by the subsidiary companies.
22. The inspectors concluded that shareholders were misled with regard to the security of their investments. The agreement for the sale of shares in **KING PROPERTY** did not disclose to shareholders that the "investment opportunities" (property developments) were made solely into subsidiaries controlled and owned by the King Group.
23. The King Group of Companies received more than R640 million in capital

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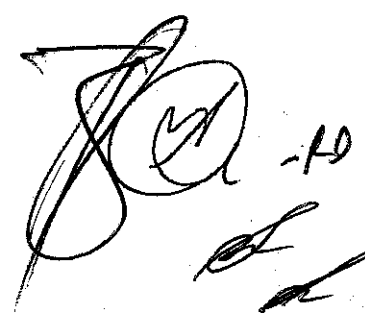
Investments from approximately 10 000 members of the public.

24. Interest payments to shareholders were made on a monthly basis, but could not be sustained as the King Group experienced cash flow problems from February 2008. To overcome its difficulties the Group launched a new investment structure through its holding company, **HOLDINGS**, by converting it to a public company and inviting shareholders in its subsidiary companies to convert their shareholding and loan accounts to shares in **HOLDINGS**. The Group also offered shares in **HOLDINGS** to the public. The new investment structure therefore comprised two types of transactions. The first was the conversion/transfer of existing shareholding in subsidiary companies to shares in **HOLDINGS**. The second was the sale of shares in **HOLDINGS** to investors for cash. More than R71 million was received in cash from investors who were issued with shares in **HOLDINGS**. In this manner existing shareholders in the subsidiary companies transferred/converted their shareholding and/or investment in the King Group to shares in **HOLDINGS** and new investor funds were obtained from the public.
25. The inspectors found that there was no distinguishable corporate identity between **SERVICES** and the other companies in the King Group, all of which operated from the same premises and were controlled by the same individuals, the King brothers. During interviews with the inspectors the King brothers stated that they treated all the companies as one. In short, investors were attracted through **SERVICES** which rendered financial services to clients. As a consequence of **SERVICES'** actions, **HOLDINGS** sold shares in **KING PROPERTY** and other subsidiaries in the Group to members of the public which were inextricably linked to a loan account in **KING PROPERTY** and the subsidiaries. Shareholders' money was used to invest (as unsecured inter-company loans) in property developments in

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companies which were all subsidiaries in the King Group and of which **HOLDINGS** was the ultimate shareholder.

26. The report contains a number of findings of other irregularities committed by the King Group. I do not intend to traverse the factual aspects of the inspectors' findings in any detail in this affidavit as the contents of the report are clear. These irregularities illustrate that the King Group and in particular its management, the King brothers, disregarded various legal requirements in order to proceed with the new investment opportunity in **HOLDINGS** regardless of the implications to shareholders in the King Group. The undue haste with which the King Group proceeded to sell shares in **HOLDINGS** was triggered by its cash flow problems. The upshot of this financial predicament and the pressure from investors for their investments to be returned was that the King Group proceeded to breach their fiduciary duties towards investors, misappropriated investor funds, made a number of misrepresentations to investors and exposed investors to unacceptable risks.
27. The inspectors found that of the R71 million received in cash for the issue of shares in **HOLDINGS**, the King Group utilised more than R21 million to pay investors in **KING PROPERTY** who demanded repayment of their investments.
28. The "share offering document", which had been used since July 2008 to market shares in **HOLDINGS**, represented to investors that funds received would be utilised to acquire assets for **HOLDINGS**. The document did not indicate that investor funds would be used to solve the financial difficulties experienced by the King Group and in particular that money would be used to pay investors in **KING PROPERTY**.
29. The inspectors found that the money received for the issue of shares in

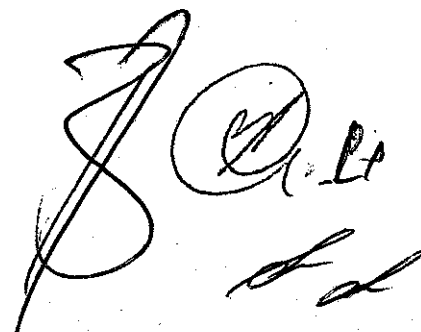
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HOLDINGS was, contrary to what was portrayed to investors, not used to acquire any properties. The King Group used the money to salvage its financial predicament due to its cash flow problems. The King Group misappropriated investor funds.

30. The inspectors found that the "share offering document" contained numerous other misrepresentations and concluded that due to the financial pressure on the King Group, these misrepresentations were deliberately made to create the impression that **HOLDINGS** was a financially sound company and thus a sound financial opportunity.
31. It is significant that two representatives of **SERVICES**, who marketed the sale of shares in **KING PROPERTY** and the Edrei companies to members of the public, resigned as they were of the opinion that they could not market shares in **HOLDINGS** to their clients in good conscience.

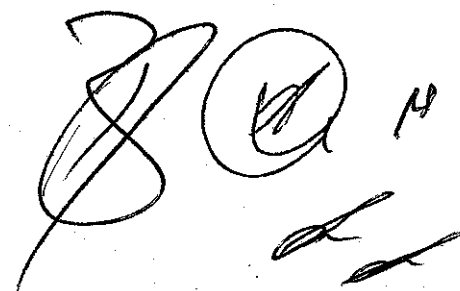
THE KING GROUP'S CURRENT FINANCIAL POSITION

32. It appears from a document provided to the inspectors by a former Chief Executive Officer of the King Group that the Group receives a monthly property income of approximately R2.1 million. The monthly expenses relating to these properties amount to more than R5.4 million resulting in a monthly deficit of R3.3 million, suggesting that the King Group is commercially insolvent.
33. On Monday 6 July 2009 a letter dated 3 July 2009 from the attorneys representing the King Group addressed to all "Creditors and Investors" was brought to my attention. A copy of this letter is attached marked "**GA2**". The contents of this letter provide corroboration of the inspectors' findings of the dire financial position of the King Group. The net asset value of the King Group is reflected as being R248 million. Apart from

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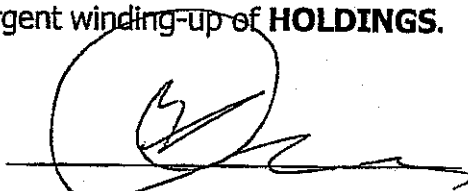
loan and investor funders in the amount of R405 million, the King Group also has secured creditors (Banks) in an amount of R480 million, as well as trade creditors of R110 million. The letter states that due to the significant decrease in the value of property, the renegeing by purchasers and lessees of some of the properties and the fact that 22 of a total of 51 properties are undeveloped, the Group's net asset value of R248 million will not be achieved in the case of liquidation. It is estimated that if the Group were to be liquidated the total value of assets would only achieve R350 to R360 million, resulting in a negative net asset value for the Group of approximately R650 million. The King Group appears, from the information provided by its own attorneys, to be insolvent.

34. The FSB is aware of severe pressures being placed on **HOLDINGS** by its investment creditors. This pressure is illustrated by the bringing of the application under the above case number, and references in the founding affidavit in that application to demands by other investors that their investments be repaid (paragraphs 7.1 to 7.3). A similar application for the winding-up of the **HOLDINGS**, brought under case number 11299/09, was settled by payment to the investment creditor in question.
35. The Registrar has come to the conclusion that there is no hope of resuscitating the financial services business of the King Group and that little purpose would be served by bringing an application in terms of section 5(1) of the FI Act for the appointment of a curator to the financial services business of the group. In the present circumstances, the winding-up of **HOLDINGS** is the most appropriate alternative. In view of the pressure being brought to bear by investment creditors, the risk of preference of one creditor over another and the obviously dire financial position of the King Group, this should be done as soon as possible.

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CONCLUSION

36. The Registrar accordingly supports the urgent winding-up of **HOLDINGS**.

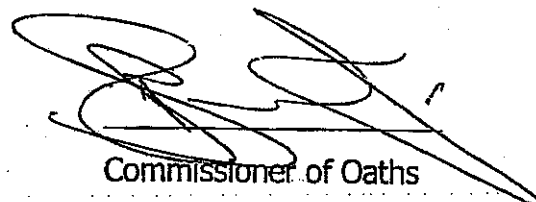

GE Anderson

I certify that this affidavit was signed and sworn to before me in my capacity as Commissioner of Oaths at Pretoria on this the 20th day of July 2009 by the deponent who:

confirmed that he:

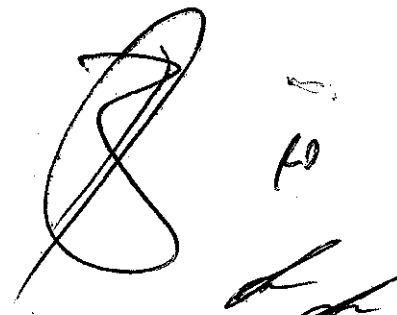
- knows and understands the contents of this affidavit;
- has no reservations about taking the oath;
- considers the oath as binding on his conscience;

uttered the words "*So help me God*".


Commissioner of Oaths

Full names :
 Full address :
 Area :
 Capacity :

BRENDON SWART
COMMISSIONER OF OATHS
 Practising Attorney
 SUITE 9, WATERKLOOF RAND CENTRE
 CNR. RIGELAND BUFFELSDRIFT AVENUE
 ERASMUSRAND, PRETORIA



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

"GA"

Case No:12756/09

In the ex parte application of

ELIZABETH YVONNA ZERA

Applicant

and

BIZ AFRICA 1332 (PTY) LTD

Respondent

(Registration No. 2001/006894/07) t/a

KING FINANCIAL HOLDINGS (PTY) LTD

VERIFYING AFFIDAVIT

I, the undersigned,

SHIRENE FRASER

do hereby make oath and say:

1.

1.1 I am an Inspector of Financial Institutions employed by the Financial Services Board (FSB). The contents of this affidavit are within my personal knowledge and are correct and true. I am capable of deposing to the facts contained herein.

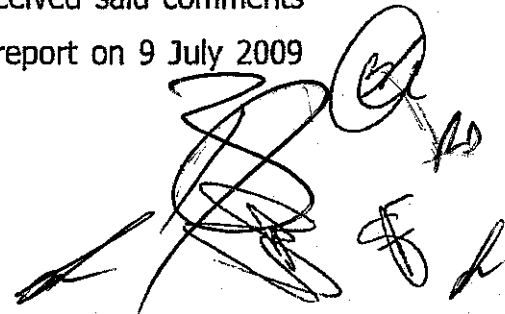
1.2 I have the following qualifications and work experience: I have a Bachelor

of Commerce: Informatics degree and a B.Tech Policing qualification. I have 5 years experience as a forensic investigator and have been employed for 4 and a half years at the National Prosecuting Authority. I was appointed as an inspector in the employ of the FSB on 1 January 2009 in terms of the Inspection of Financial Institutions Act, No. 80 of 1998.

- 1.3 On 12 and 15 December 2008 the Registrar of Financial Services Providers (Registrar) issued instructions to carry out an inspection of the affairs of A&S King Makelaars (Pty) Ltd trading as King Financial Services ("SERVICES"). A number of inspectors were appointed to conduct the inspection. On 2 March 2009 the Registrar extended the inspection instruction to include SERVICES' associated institutions which includes the Respondent company.
- 1.4 In the ranks of the inspectors was Mr Naweed Soofie. Mr Soofie has a Bachelor of Commerce degree specialising in Finance and Management. His experience includes being a consultant at KPMG in its Risk Advisory Services Department. At the FSB, he was a compliance analyst in the Insurance Compliance Department before being appointed an Inspector in terms of the Inspection Act. Advocate Retha Stander, the third co-author of the inspection report, is an admitted advocate of the High Court. She is a former prosecutor and state advocate having had considerable experience in the field of criminal prosecutions. In addition she is an experienced inspector having conducted a number of inspections in terms of the Inspection Act.

2.

- 2.1 On 26 June 2009 a draft inspection report was ready and handed to the affected institutions and its attorneys, calling for comments on the contents of the draft. We have, however, only received said comments on 14 July 2009, whilst we already finalised our report on 9 July 2009 and handed same to the Registrar on 10 July 2009.



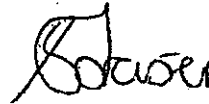
2.2 We perused the comments and were not persuaded that the comments received justified any amendment or addition to our report.

3.

A copy of the inspection report dated 9 July 2009 is attached to this affidavit and for identification purposes all the pages of the main report were initialled by me. I hereby confirm the authenticity of the report and state that the report correctly reflects our findings during the inspection. As indicated in the Registrar's affidavit, the annexures to the report have been excluded in order to avoid prolixity. I confirm that the annexures were provided to the attorneys representing the Respondent as indicated in paragraph 2.1 above.

4.

I have read the final draft of the affidavit to be deposed to by the Deputy Executive Officer of the Financial Services Board, German Emmanuel Anderson, and confirm the correctness of the affidavit insofar as it relates to the said inspection report.



S FRASER

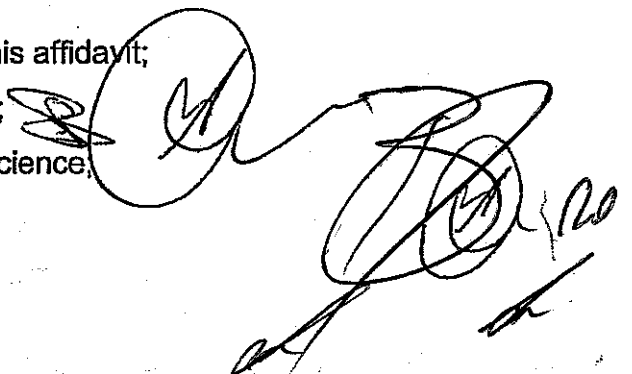
I certify that this affidavit was signed and sworn to before me in my capacity as Commissioner of Oaths at Pretoria on this the 20th day of July 2009 by the deponent who:

confirmed that she:

knows and understands the contents of this affidavit;

has no reservations about taking the oath;

considers the oath as binding on ^{her} ~~his~~ conscience.



uttered the words "*So help me God*".


Commissioner of Oaths

Full names :
Full address :
Area :
Capacity :

BRENDON SWART
COMMISSIONER OF OATHS
Practising Attorney
SUITE 9, WATERKLOOF RAND CENTRE
CNR. RIGEL AND BUFFELSDRIFT AVENUE
ERASMUSRAND, PRETORIA

