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SAMEVATTING.

TITEL: DIE VERKRYGING VAN KAPITAAL IN
DIE SUID-AFRIKAANSE MAATSKAP-
PYEREG MET SPESIFIEKE VERWYSING
NA DIE AANBOD VAN AANDELE AAN
DIE PUBLIEK.

DEUR: PETRUS ALBERTUS DELPORT.

PROMOTOR: PROF.DR. D.H.BOTHA.

DEPARTEMENT: HANDELS- EN ARBEIDSREG.

GRAAD: LL D.

Die doel van hierdie verhandeling is om die proses van kapitaalverkryging deur die maatskappy te ondersoek en om veral op die begrip "aanbod van aandele aan die publiek" en verbandhoudende aangeleenthede klem te lê. Om hierdie doel te bereik was dit nodig gewees om op die verskillende kapitaalvorme te let soos wat dit ten opsigte van aandelekapitaal en leningskapitaal voorkom. Daar is in hierdie verband ook op enkele faktore gewys wat die maatskappy in ag moet neem in die keuse tussen die kapitaalvorme. Die regsreëls wat die aanbod van aandele aan die publiek reguleer is geskiedkundig nagespoor om sodoende die doel daarvan vas te stel en ook om te bepaal of daar nog aan hierdie doel voldoen word. Daar is ook 'n regsvergelijkende studie gedoen om sodoende perspektief ten opsigte van die effektiwiteit en wenslikheid van hierdie reëls te verkry.



Die drie elemente wat die openbaarmakingsvereistes van die Maatskappywet 61 van 1973 in werking stel is in besonderhede ontleed om sodoende te bepaal of daar enige moontlike leemtes bestaan. Oplossings vir hierdie leemtes is dan ook in gepaste gevalle aan die hand gedoen, met die uitgangspunt steeds in gedagte dat die verkryging van aandelekapitaal deur middel van die aanbod van aandele aan die publiek sover moontlik vereenvoudig moet word om sekerheid ten opsigte van die maatskappy daar te stel. Die teenkant hiervan is egter ook in gedagte gehou, naamlik dat die belegger in aandele die mees effektiewe beskerming moet geniet.

Dit het veral duidelik geblyk dat die onderskeid tussen die begrippe "inskrywing op" en "koop van" aandele vir sover dit die Suid-Afrikaanse situasie betref, uitgedien is en dat daar slegs voorsiening gemaak moet word vir die koop van aandele op die primêre sowel as op die sekondêre mark.

As gevolg van die eng omskrywing van "aandeel" in die Maatskappywet blyk dit dat daar 'n aantal prosedures van kapitaalverkryging is wat nie deur openbaarmaking gereguleer word nie en die benadeling van die betrokke beleggers tot gevolg het.



Die laaste element wat die openbaarmakingsvereistes van die Maatskappywet in werking stel, naamlik die begrip "publiek", is in wese ondefinieerbaar as gevolg van die vaagheid daarvan en gevolglik die element van sekerheid by kapitaalverkryging benadeel.

Die verband tussen die prospektus en die voornote-ringsverklaring is onduidelik en verwarrend veral ten opsigte van die dualistiese benadering wat ten opsigte van aanspreeklikheid vir onware verklarings in hierdie dokumente gevolg word en behoort opgeklaar te word ten behoewe van die belegger.



SUMMARY.

TITLE: THE ACQUISITION OF CAPITAL IN
THE SOUTH AFRICAN COMPANY LAW
WITH SPECIFIC REFERENCE TO THE
OFFER OF SHARES TO THE PUBLIC.

BY: PETRUS ALBERTUS DELPORT.

PROMOTER: PROF.DR. D.H.BOTHA.

DEPARTMENT: MECANTILE AND LABOUR LAW.

DEGREE: LL D.

The purpose of this thesis is to investigate the process of the acquisition of capital by a company and in particular emphasis will be placed on the concept "an offer of shares to the public" and matters incidental thereto. In order to achieve this purpose it was necessary to distinguish the different forms of capital as manifested in share and loan capital. The different factors which the company should take into account in the exercise of its choice regarding the various forms of capital are also analyzed. The legal rules regulating the offer of shares to the public are historically investigated in order to establish their purpose and also to determine whether they still achieve this purpose. A Comparative study was also done in order to place the desirability and efficacy of these rules in perspective.



The three elements which make the disclosure requirements of the Companies Act 61 of 1973 operative are analyzed in detail in order to ascertain whether any shortcomings exist. Solutions for these shortcomings are suggested in appropriate cases but against the background of the concept that the acquisition of share capital by the offer of shares to the public must be simplified as far as possible in order to promote certainty from the viewpoint of the company. Against this however, the principle that the investor in shares should enjoy the most effective protection was also highlighted.

It especially became apparent that the distinction between the concepts "subscription for" and "sale of" shares have become redundant in so far as they are applied in the South African experience and that provision should be made for the sale of shares on the primary as well as the secondary market.

As a result of the narrow definition of "share" in the Companies Act it is apparent that there are a number of procedures for the acquisition of capital which are not regulated by disclosure and consequently have the effect of prejudicing the investors.

The last element which makes the disclosure require-



ments in the Companies Act operative, namely the concept "public", is in essence undefineable because of its uncertainty, with the effect that the element of certainty in the acquisition of capital is detracted from.

The relationship between the prospectus and the pre listing statement is uncertain and confusing especially in respect of the dualistic approach with regards tot untrue statements in these documents and should be clarified on behalf of the investor.



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TYDSKRIFAFKORTINGS.

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AALR	Anglo-American Law Review.
ABLR	Australian Business Law Review.
Adelaide LR	The Adelaide Law Review.
AER	American Economic Review.
AJ	Acta Juridica.
ALJ	The Australian Law Journal.
ASSAL	Annual Survey of South African Law.

- B -

Banking LJ	Banking Law Journal.
BL	The Business Lawyer.
BML	Businessman's Law.
CB LJ	The Canadian Business Law Journal.
CBR	Canadian Bar Review.

- C -

Co Law	The Company Lawyer.
Columbia LR	Columbia Law Review.
Cornell LR	Cornell Law Review.
CSLJ	Company and Securities Law Journal.

- D -

DJ	De Jure.
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DR De Rebus.

- G -

GWLR George Washington Law Review.

- H -

HBR Harvard Business Review.

HLR Harvard Law Review.

- I -

IBL International Business Lawyer.

IL The International Lawyer.

ITR Income Tax Reporter.

- J -

JB The Journal of Business.

JBF Journal of Business Finance.

JBL The Journal of Business Law.

JLE The Journal of Law and Economics.

- L -

LQR The Law Quarterly Review.

- M -

MB Moderne Besigheidsreg.

McGill LJ McGill Law Journal.

Minn LR Minnesota Law Review.

MLR The Modern Law Review.



- N -

NYULR New York University Law Review.

- O -

OLR Oklahoma Law Review.

Ottawa LR Ottawa Law Review.

- S -

SACLJ The South African Company Law Journal.

SAGR Die Suid-Afrikaanse Geoktrooieerde Rekenmeester.

SALJ The South African Law Journal.

SATE Die Suid-Afrikaanse Tydskrif vir Ekonomie.

- T -

TA The Accountant.

TAM The Accountant's Magazine.

THRHR Tydskrif vir Hedendaagse Romeins-Hollandse Reg.

TP Tax Planning.

TSAR Tydskrif vir Suid-Afrikaanse Reg.

- U -

U Fla LR University of Florida Law Review.

U Pa LR University of Pennsylvania Law Review.

- V -

Va LR Virginia Law Review.



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UITGIFTE EN NOTERINGS 1969.

MAATSKAPPY:	UITGIFTE- PRYS:	NOTERINGS- PRYS:	MARKDIS- KONTO:	AARD:
	a(sent)	b(sent)	(b)-(a)%(b)	
CORLETT DRIVE	250	150	-66.67%	PP
AIB	250	210	-19.05%	
NECKLMAN	160	160	0.00%	
RUSCON	90	90	0.00%	
NICTUS	75	77	2.60%	
FEDERALE KUNS	105	110	4.55%	
ALDERSON & FLIT	75	80	6.25%	
BACKCLO	125	135	7.41%	TENDER
SPECTRO	300	325	7.69%	
HILL SAMUEL	230	250	8.00%	
GAYDON	85	95	10.53%	
SII	200	225	11.11%	
GARVIN	110	125	12.00%	
MONKOR TRUST	280	320	12.50%	
TUCKERS	310	360	13.89%	
RETCO	120	140	14.29%	
LEON PASCAL	115	135	14.81%	
SHULTON	110	130	15.38%	
PRESCAT	75	90	16.67%	
KANHYM	70	85	17.65%	
G&D SABLE	180	220	18.18%	
ELMAR	65	80	18.75%	
GREGORY KNIT	170	210	19.05%	
NEDFIN	275	340	19.12%	
MORBEL	120	150	20.00%	
BIVEC	115	145	20.69%	
KAISTAR	100	130	23.08%	
IGI	100	130	23.08%	
GOUGH COOPER	250	325	23.08%	
NINIAN & LESTER	240	315	23.81%	
BESTER	240	320	25.00%	
METKOR	60	80	25.00%	
METROL	100	135	25.93%	
HIGHVELD STEEL	125	180	30.56%	
NICSA	100	145	31.03%	
RM HOLDINGS	155	230	32.61%	
AVON WIRE	80	120	33.33%	
GRIZUKI	100	150	33.33%	TENDER
CARLTON PAPER	140	220	36.36%	
MELODYS	100	159	37.11%	
MODEL HOMES	300	480	37.50%	
MOBILE IND	110	180	38.89%	
ADONIS	65	110	40.91%	TENDER
SATCON	100	175	42.86%	



GERRIE DE JONG	100	175	42.86%	TENDER
BAKSTEY	70	125	44.00%	
CAPCAR	100	180	44.44%	
RENNIES	190	350	45.71%	
ELLERINE	180	380	52.63%	
EDCON	235	500	53.00%	
SKYE	100	230	56.52%	
SCHUS	130	330	60.61%	
NFI	150	400	62.50%	
SAM STEELE	80	215	62.79%	
ALCAN	200	550	63.64%	PP
EMPISAL	70	200	65.00%	
METLIFE	375	1225	69.39%	
DUBIN	90	300	70.00%	
TEDELEX	70	350	80.00%	
SAGE	100	520	80.77%	



UITGIFTE EN NOTERINGS 1985/86: (20/11/1985-20/12/1986).

MAATSKAPPY:	UITGIFTE- PRYS:	NOTERINGS- PRYS:	MARKDIS- DISKONTO:	JE/OKM	AARD
	a(sent)	b(sent)	(b)-(a)%(b)		
T&N	270	230	-17.39%	JE	
UME	130	125	-4.00%	JE	
METPROP	200	195	-2.56%	JE	
DA GAMA	260	255	-1.96%	JE	
VANSA	300	300	0.00%	JE	
MEDICLINIC	100	100	0.00%	JE	
TAMBOTI	200	202	0.99%	JE	
MIDAS	275	280	1.79%	JE	
NEIHOLD	1900	2000	5.00%	JE	REGTE
QUALITY TYRES A GA	85	90	5.56%	OKM	PP
FABLIBE	50	53	5.66%	JE	
Q DATA	165	175	5.71%	JE	
DRIVETECH	75	80	6.25%	OKM	PP
GRINCOR	270	290	6.90%	JE	
GBS HOLD	195	210	7.14%	JE	TEND.
PACTAPE	60	65	7.69%	OKM	PP
INVESTEC	400	435	8.05%	JE	
REICHMANS	115	130	11.54%	JE	
POINTER	23	26	11.54%	OKM	
ANCOM	35	40	12.50%	OKM	PP
SALTERS	100	115	13.04%	JE	
MAXMECH	40	47	14.89%	OKM	PP
CANVACOR	35	42	16.67%	JE	
SUN BOP	200	240	16.67%	JE	
MILLY'S	50	60	16.67%	OKM	PP
METPOL	315	380	17.11%	JE	
LIBVEST	200	247	19.03%	JE	
PENNYPINCHERS	60	75	20.00%	OKM	PP
CRUSADER	150	188	20.21%	JE	
KEMTRADE	50	63	20.63%	OKM	PP
ADPROM	55	70	21.43%	OKM	PP
QUALITY TYRES	90	115	21.74%	OKM	
SQUIRES	85	110	22.73%	JE	
MILLY'S 11% WVA	50	65	23.08%	OKM	PP
AOS	40	53	24.53%	OKM	PP
MACADAMS	45	60	25.00%	OKM	PP
SPECTRUM	40	54	25.93%	OKM	
BAKOVEN	27	37	27.03%	OKM	PP
LASER	145	200	27.50%	JE	
JOEL	600	830	27.71%	JE	
LIFEGRO	285	395	27.85%	JE	
SHOPRITE	100	140	28.57%	JE	REGTE
MINETEC	25	35	28.57%	OKM	PP
HOUSEWARES	50	72	30.56%	JE	



BYLAE G.

MAS HOLD	150	225	33.33%	JE	
PRES MED	30	46	34.78%	OKM	PP
FURNITURE FAIR	40	62	35.48%	OKM	PP
TR SERVICES	145	233	37.77%	JE	
MIKES KITCH	45	73	38.36%	OKM	PP
BROKERS INV CO	30	50	40.00%	OKM	
AFCOM	100	170	41.18%	JE	PP
SUNPAK	45	77	41.56%	OKM	PP
SOUTHGO	100	177	43.50%	JE	
PUBLICO	44	80	45.00%	OKM	PP
CASHBUILD	110	205	46.34%	JE	
PUNCHLINE	60	120	50.00%	JE	
SPUR	40	83	51.81%	OKM	PP
SPL	75	190	60.53%	JE	
UBS	200	550	63.64%	JE	REGTE
COLUMBIA	75	210	64.29%	JE	
JUICY LUCY	28	98	71.43%	OKM	