



Playing bank-bank with other people's money

Deon Basson

Deon Basson is an author, honorary professor in auditing at the University of Pretoria and a former forensic financial journalist, who has been voted South Africa's Financial Journalist of the Year in 1994, 1995, 1997, 1999, 2000 and 2002. The article below is an extract from his book titled "Public Interest Warriors" to be published soon.

In June 1984 the then Office for Financial Institutions internally debated the viability of warning the public against investments in unregistered financial institutions. It was noted at the time that such warnings should be dealt with cautiously because entrepreneurs suffering damages may hold the registrar of financial institutions culpable.¹

It was further noted that apart from the absence of statutory immunity, the registrar was in principle bound to secrecy in terms of legislation. "In the UK the Securities Investment Board has the authority to warn the public against a specific investment scheme and is protected by legislation against culpability."²

"Such actions form part of the debate as to how far the authorities should go to protect the public against themselves. Entrepreneurs are pivotal in taking risks and having risk capital at their disposal. It is a characteristic of the capitalist system where competition is enhanced that some enterprises will be unsuccessful with resultant losses for investors and creditors."³

In conclusion it was stated that the danger existed that warnings will create expectations among members of the public that the regulator will warn them in all instances which would not be possible.⁴

This philosophical and practical debate about the degree of protection by government has been raging in and outside the corridors of regulators for many years. In 1992, when the issuing of debentures by unlisted operators was fashionable, I had an eye-opening encounter with one such operator.

At the time, the SA Reserve Bank had referred the debenture scheme of OTC Finance International, one of the smaller players in the debenture market to the Commercial Branch of the SA Police for further investigation.⁵

In a marketing document capitalism was praised as the only "moral political and economic system in history."⁶ In a subsequent interview director Freek Viljoen voiced his severe displeasure with the SA Reserve Bank and me. He lectured me thoroughly about the virtues of capitalism quoting distinguished American economist Milton Friedman extensively. He branded the Reserve Bank and me as socialists who were destroying wealth at an unprecedented scale.

Ironically, Viljoen was one of those operators who didn't believe in disclosure by means of a prospectus. The morality he was talking about certainly should have implied a high degree of transparency. If not, it would seriously impede the freedom of

investors to take an informed decision.⁷

Viljoen's reference to Friedman was ill-founded. Even this leading protagonist of capitalism saw a need for intervention in certain circumstances: "The need for government in these respects arises because absolute freedom is impossible. However attractive anarchy may be as a philosophy, it is not feasible in a world of imperfect men. Men's freedom can conflict, and when they do, one man's freedom must be limited to preserve another's..."⁸

By the late 1980's I have had my fair share of experiences with sly entrepreneurs not believing in disclosure but taking money from the public and not making their promises good.

Some of these schemes were business opportunity schemes⁹ and others investment opportunity schemes¹⁰. Others, as the later schemes of Zirk Engelbrecht¹¹, were supposed to fall squarely within the ambit of the Companies Act.

By March 2007 total banking deposits held by individual South Africans ran into almost R269bn which is equal to 15% of South Africa's GDP.

Most if not all of these earlier schemes I had encountered, attracted relatively modest capital from the public. Initially millions, rather than tens of millions or hundreds of millions of rands were the standard.

The mid-1980's saw the introduction of Masterbond, a massive investment scheme with a brand new but unspoken philosophy behind it. Earlier

investment schemes were crude in the sense that it was risk or venture capital invested in highly speculative unlisted equities. Although sections of the investing public were and still are particularly gullible it is also probably true to say that a major portion of the population is conservative and risk-averse.

Holding an old-fashioned savings account or savings deposit with a bank thus remains until this day the norm for millions of South Africans. Cash will always be part of investment portfolios. Pensioners are particularly prudent and conservative because they rely on their money in the bank for interest income.

By March 2007 total banking deposits held by individual South Africans ran into almost R269bn¹² which is equal to 15% of South Africa's GDP.¹³

By playing "bank" - well, almost! - and tapping into this massive source of banking deposits is the best chance anyone has to raise really vast sums of money from the public. Much more than the old-style venture capitalists such as Engelbrecht could ever dream to do.

This is exactly what Masterbond did in the 1980's using debentures

tures, participation mortgage bonds and property syndications as a proxy in disguise to do "banking" business and attract "deposits" from the public.

All they had to do was to offer a highly competitive "interest rate" to lure investors away from banks and other alternative investment solutions. By informally and subtly depicting itself as a "bank" made Masterbond a "trustworthy" institution. Mixing property into the ingredients of the investment on offer created the illusion that investor's money was safe and sound.

In doing so Masterbond crossed the Rubicon and raised hundreds of millions of rands from the public.

In 1984 the then Registrar of Financial Institutions, Dr Robbie Burton issued an investment warning to the public stating:

"The Acts applicable to financial institutions such as banks, building societies, insurance companies, pension funds, unit trust schemes, participation bond schemes, etc have been introduced by Parliament to ensure that the investing public enjoys a high measure of protection through the financial requirements with which financial institutions registered in terms of these acts must comply. Investors entrusting funds to unregistered persons do not enjoy the protection afforded by the financial legislation."¹⁴

The statement by Burton and the fact that Masterbond Participation Bond Trust Managers (Pty) Ltd (commonly known as "Managers") could describe itself as a financial institution were extensively used by Masterbond and its agents when soliciting funds from the public during the ensuing years.¹⁵

In principle this tactics would be re-deployed by Sharemax a decade or so later.¹⁶

Masterbond got exempted from the Unit Trust Control Act by virtue of a decision in 1984 by an assistant-registrar in the Office of Financial Institutions, one A.J. Loubser. Subject to certain conditions Masterbond were then registered as a participation mortgage bond scheme.¹⁷

The Office for Financial Institutions was the frontrunner to the Financial Services Board (FSB) and a division of the Department of Finance.

Burton's statement was reprinted by Masterbond in bold in a marketing brochure. The marketing brochure added salt and pepper saying, among others, that "registered financial institutions have to meet numerous financial requirements, all aimed at safeguarding investors' and depositors' (author's emphasis) funds. And to ensure that they adhere to the regulations their affairs are regularly scrutinized (author's emphasis) by the registrar."¹⁸

Very broadly speaking, there appears to be two options for entrepreneurs wishing to raise funds from the public. Either you get a banking license in terms of the Banks Act enabling you to raise deposits¹⁹ or you establish a public company, register a prospectus in compliance with all the relevant requirements of the Companies Act and raise risk capital from the public.²⁰

Masterbond and several other companies during that time chose to sidestep, among others, the Banks Act and the Companies Act. The result was that investors were left unprotected.

The Nel Commission cited section 116 of the Companies Act which provides that a company, if so authorized by its memorandum or by its articles, may create and issue secured or unsecured debentures.²¹

Such an issue of debentures may be subject to a trust deed appointing a trustee for the debenture holder, who, in terms of

section 122 may not be a director or officer of the company issuing the debentures.²²

Judge Nel was pertinent about the lack of protection to debenture holders: "...no limit is placed on the value of the debentures issued and the trustee has no independent right of access to the books and records of the borrowing company."²³

Masterbond subsidiaries such as Marina Martinique and Fan-court, who each had a share capital of a mere R100 and no reserves, issued debentures to investors for more than R50m each.²⁴

Debentures are debt by definition and it speaks for itself that the risk associated with such an immensely highly geared balance sheet will almost always be unbearable.

Judge Nel pointed to various international examples where limits are in place. In Japan the amount of debentures for which subscriptions are to be invited shall not exceed the net amount of the existing assets of the company as shown by the last balance sheet.²⁵

In Korea it shall not be more than twice the stated capital and the reserve fund²⁶ and in Thailand it may not exceed the paid-up capital.

Too high gearing (debt as % of shareholders' funds) is likely to be a risk factor for many a business. More so for a property related business. Couple this high gearing with short term funding and you have a recipe for disaster.

During the period 1984 to 1991 Masterbond attracted funds in excess of R1bn from more than 20 000 members of the public. The bulk of these funds were solicited as short-term investments without the issue of a single prospectus.²⁷

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During the 13 month period ending 31 March 1991 the inflow of debenture monies amounted to about R502m which were roughly R300m in excess of the budget. Six months later Masterbond collapsed.²⁸

Although this classical case study is not in all respects comparable with South African debenture disasters the liquidation of Trustees Executors & Agency Co (TEA) in Australia²⁹ in the early 1980's illustrate the high risk attached to high gearing and short term funding of property assets.

TEA was the first trustee company to be formed in Australia going back to the 1800's. For many years its share capital remained cosily small amounting to only A\$280 000 in 1972. Total shareholder's funds were then A\$1,7m and profits were under pressure resulting from high costs and poor technology but the company was conservatively geared. TEA had at that time nearly A\$200m off balance sheet assets under management.³⁰

As a solution to the problem a money market operation was proposed. At the 1972 annual meeting the chairman Thomas Webb told shareholders the company was "ever mindful of the desirability of exploring wider avenues of business activity and services."³¹

TEA believed it could "make better arrangements with respect to cash to balances standing temporarily in the accounts of our beneficiaries and clients.", he said. By handling it in bulk, rather than individually, TEA could generate higher rates of interest.³²

So TEA went into client interest-bearing deposits (CIB's), initially with the idea to relend the money in the market on bonds, bills or inter-company loans. There were constraints as the company had to register a prospectus if it wished to actively solicit funds.

The board decided it would only accept CIB's if requested by clients.³³

But the line between soliciting funds and suggesting to clients that they should seek information about deposits is a fine one. The company failed to register a prospectus as it would erode profits. Clients were essentially asked to lend money unsecured to TEA.³⁴

In September 1980 the board vetoed the use of funds to acquire property. But soon afterwards property ventures were frequently funded with CIB funds with the board's concurrence. Even if the board did not specifically authorize all property deals they should have known about it.³⁵

A persuasive man called Peter Bunning who joined TEA in 1974 was the driving force behind moving into property. He was appointed to the board and as chief executive in 1980.³⁶

The two key ingredients for disaster were by 1980 evident on TEA's balance sheet - a highly geared balance sheet and short term funding.

As Trevor Sykes, author of *The Bold Riders - Behind Australia's Corporate Collapses* puts it: "It is inherent in any market operation that the liquidity of the assets should match the liquidity of the liabilities. If clients call more cash than the operator can raise immediately by liquidating securities, the operator may borrow to bridge the gap, but such borrowings should be essentially temporary to follow an orderly liquidation of securities."³⁷

Then Sykes makes a very pertinent point: "Property is one of the most illiquid assets, particularly uncompleted development property."³⁸

By June 1980 TEA had assets at book value of A\$108m of which A\$102m was funded with borrowings. The bulk of this was of course deposits from clients which had soared from A\$5,1m in 1974 to A\$133,6m in 1982.³⁹ The pattern that would lead to TEA's demise was by 1980 well established.

With only A\$6m in shareholders' funds TEA had committed itself to property ventures of A\$26m between 1980 and 1982.⁴⁰ Profits on early property investments merely served to whet the appetite of Bunning and others.⁴¹

In 1980 the property market in Australia was buoyant. TEA launched on this wave enthusiastically. By the second half of 1982 Australia was suffering from a short but severe recession. Interest rates rose, GDP growth was negative for the first time in 30 years and the buoyant property market suddenly receded.⁴²

High interest rates forced commercial property yields up and property prices fall. TEA was caught badly exposed.⁴³

Disclosure to shareholders and the board was poor to the extent that they could not grasp accurately what the companies' exposure to property was.⁴⁴ Couple this with property revaluations and creative accounting⁴⁵ and it is clear that shareholders had been kept in the dark.

Bankruptcy was the inevitable outcome and Bunning paid the price for receiving secret commissions and falsifying the financial statements. He was sentenced to nine months in jail, a fine of \$A30 000, a modest fine of A\$1 800 and ordered to repay bribes of A\$27 225 for accepting the secret commissions and three years in jail for the falsified financial statements. The two jail sentences ran concurrently.⁴⁶

In 1992, a year after Masterbond's collapse, another debenture venture named Supreme Holdings went into liquidation in

South Africa.⁴⁷ Here property was not the major ingredient as the scheme invested, among others, through shares and loan accounts into listed furniture companies such as Supreme Industrial Holdings and Profurn.⁴⁸

It was impossible to gauge the liquidity of the scheme accurately because the company refused to make available financial statements.⁴⁹ What was known about the scheme however left me with a degree of discomfort.

Analysis showed a high probability that liabilities exceeded assets with a big margin. If that was not the case, then the best case scenario was that the company operated with a high gearing.

Although Supreme Industrial Holdings and Profurn were listed companies these were speculative assets. They could not that easily be sold if the need arose. In a liquidity sense they were not much different from an investment in property.

A substantial part of the assets consisted of the relatively illiquid debtors' book of Profurn anyway.⁵⁰

Contrary to section 128 of the Companies Act the directors of Supreme Holdings were initially reluctant to make available their debenture register for inspection. Financial director Rocque Hafner told me that Standard Bank would not make available its register of deposits for inspection. It was a strange argument because he went to town in explaining that Supreme was not a deposit-taking institution or a second Masterbond.⁵¹ Hafner later conceded that he was wrong on this point.⁵²

Supreme's debentures were issued at nominal rates of between 18 - 20%. At the time (April 1992) the 12-month fixed deposit rate was 14,5%⁵³ suggesting a hefty premium above market related rates. This was a clear indication of high risk.

At the time *Finansies & Tegniek* stopped publishing Supreme's quoted interest rates on its statistical pages.⁵⁴

On 28 October 1992, former TrustBank public relations manager Jaap Metz organized a lunch meeting at Ellis Park's Touchdown for *Finansies & Tegniek* editor Gert Marais and me with Supreme chairman Edward Ronbeck. Ronbeck appeared extremely nervous and irritated by our questions.

He blamed the Masterbond scam for Supreme's difficulty to roll over debentures and envisaged selling some unlisted assets. Furthermore Supreme Industrial Holdings would repay debt of R50m to Supreme Holdings. The repayment would be funded with the issue of new debentures of R80m by a subsidiary of Supreme Industrial Holdings.⁵⁵

The debentures were issued for various terms. For 12 months the nominal rate was 16,25%, for 24 months it was 15% and for 36 months 14,5%. For amounts exceeding R200 000 the rates were negotiable.⁵⁶

At the time the big banks offered rates of 12,5% to 12,75% for one year, 11,5% to 12% for two years and the same for three years.⁵⁷

Supreme did much better but clearly the risk profile was substantially higher and its liquidity squeeze was pretty evident.

It didn't come as a big surprise when Ronbeck, a lawyer by training, approached the court less than three weeks later with a liquidation application.

Analysis shortly after liquidation showed that listed assets were then worth R118m and liabilities ran into R298m.⁵⁸ Six weeks later, a report from Peter Goldhawk, forensic investigator of the

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then Coopers Theron Du Toit revealed that the directors of Supreme Holdings acquired an interest of 80% in the company for a mere R4 000. It also transpired that the assets of the company were only worth about R83m.⁵⁹

A highly emotional meeting of debenture holders on 26 February 1993 at the then Rand Afrikaans University underlined the dangerous nature of schemes with little capital. In fact, perpetrators of such schemes should attend such a meeting as a probation exercise before they embark on their ambitious plans to raise capital from elderly investors.

In 1994, an affidavit compiled by the liquidators exposed the scheme for what it really was. Supreme's overheads and interest payments exceeded its revenue. Nevertheless, the group survived for more than six years because it kept on issuing debentures. In a sense it worked like a chain letter demanding more and more money from the public.⁶⁰

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Substantial amounts were transferred to secret accounts for the benefit of directors. Brokers who were selling the debentures to the public were mostly badly informed and qualified and advised their clients wrongly. Many of them were employed by banks and financial institutions.⁶²

Supreme's interest rates were high, possibly the highest in the market. The company paid a commission to brokers which were higher than that paid by "normal" financial institutions.⁶³

Marketing brochures consisted of sales talk only and disclosed little facts. No attempt was made to disclose information required by the Companies Act. Truth played a minor role in the sales drive. The latter was nothing more than an organized and mischievous attempt to feed the public with misrepresentations.⁶⁴

Masterbond, Supreme and TEA all fall victim to a low capital base, high gearing and an illiquid balance sheet. Now, more than a decade later, the various syndication companies controlled by Sharemax Investments are disregarding the historic lessons by trading in factual insolvent circumstances.⁶⁵

Factually insolvent or not

Andre Prakte's view	ACT Audit Solution's view
Not one of these syndications are financially sound from an income generating point of view. They are all factually insolvent. ⁶⁶ The negative shareholders' value is largely due to the fact that the expenses of Sharemax are taken upfront by the syndication company and written off as goodwill. There is no value added for investors. There is in actual fact value destruction on a large scale. ⁶⁷	The 2006 audit of various syndication properties (sic) revealed that some of the companies were technically solvent. All the properties are not revalued annually, due to the cost implication thereof. Were more regular revaluations possible, the picture might have been different. When looking at the capital growth achieved by the investors of the buildings (sic) that have been sold, the technical solvency of the companies at some stages is clearly irrelevant. Solvency only becomes an issue if the buildings are sold. It has been proven that all properties that have been sold, or are in the process of being sold achieved a capital gain above the total syndication value including all the syndication costs. The syndications all meet their monthly obligations. All the investors receive their monthly income as projected. It is not clear how the syndications can be described as to be "not financially sound". ⁶⁸

True, in a property bull market it is possible to move out of factual insolvency by selling properties for a profit as had in fact happened with some Sharemax properties.⁶⁹ But while being factually insolvent the risk attached to that is solely being carried by the investor and not by Sharemax.

Liquidity (the ability to convert assets such as property into cash and to repay creditors when required) should be judged from both a company and investor perspective. Property, as we have seen above, is an illiquid asset. In the case of Sharemax each syndication company owns a property or two making the asset side of its balance sheet by definition illiquid.

Gift or loan?

Andre Prakte's view ⁷¹	ACT Audit Solution's view ⁷²
A further point of concern is the fact that as per paragraphs 9 and 10 of the Waterglen prospectus ⁷³ the debentures that the company is issuing to the syndicators will rank a pari passu in all respects to the company's ordinary share capital and have no special rights attached thereto. The loans or debentures are not repayable and will only be redeemed on the disposal of the assets of the company, the fixed property, being it a voluntary or compulsory liquidation. The prospectus states that in all circumstance the loans or debenture holders will rank pari passu for the distribution rights of the shareholders holding ordinary shares. They therefore have no preference to shareholders as specified in the Companies Act. The fact that these debentures are never redeemable, have no special rights, share in the equal distribution as per the ordinary shareholders' rights in the company's assets at date of liquidation means that these debentures are nothing more than a gift to the company by the investor. I base my opinion upon the following assertion: "There must be an obligation on the receiver to return an equivalent to what he has received: hence if one person gives another a sum of money but it is agreed that it is not to be repaid, the transaction is not a loan". This was conferred in the case of Mahomed and Son v Horvitch's Estate, 1 928 (AD1). The Income Tax Act goes further in stating in section 55(1): "Donations means disposal of property including the gratuitous waiver or renunciations of a right." The redemption and rights of these debentures or loans have in other syndications been verified by the auditors when they state in the balance sheet that the company has no obligation to repay the loan accounts whatsoever or alternatively the loans are never to be repaid. It is my contention that in such cases this is a gift to the company as it is not share capital and it is not a loan.	The definition of a donation in terms of section 55 of the Income Tax Act is "any gratuitous disposal of property including any gratuitous waiver or renunciation of a right." This is clearly not the case when a company loans money to buy a property or shares in a property company. None of the debenture holders who are also shareholders, have waived their right to their loan capital. A market related interest rate is paid on the loans. The loans are repaid when the shareholders sells his (sic) linked unit. The loans are also repaid if the building is sold. Here is an extract from a syndication company's financial statements that describes the loans from shareholders: "The loans bear interest at a rate of 11,37% per annum and are unsecured. The loans from the company to the shareholders will be repaid in the event of selling the investment property of the group. In the event of ...liquidation... or on disposal of the investment property, any dividend which may be available for distribution will be distributed among the shareholders pro rata to their shareholding in the company... The maturity of non-current borrowings is later than 5 years.

To match this illiquidity of assets the repayment term of liabilities - which are loans from investors - is manipulated. These loans are according to financial statements of various earlier syndication companies only payable when the company is liquidated (in practice these loans were in a number of instances paid back shortly before voluntary liquidation from the net proceeds of property sales).⁷⁰

Let's take stock by looking briefly at the nature of the scheme. In essence two companies form part of a syndication scheme - a private company and a public company.

Let's say the syndication is for R100m and the property to be syndicated is acquired for R80m. Sharemax would then sell 100% of the shares in the private company (at that stage a shell company with no assets) to the public company for R20m once that amount had been solicited from the public by the public company.

Once the remaining R80m had been canvassed, the public company would then lend that amount to the private company to acquire the property. That loan will be for a period of 30 years but the period may be extended.⁷⁴

Clearly the ability of the public company to redeem debentures is further restrained by this loan agreement between the public and the private company.

Be as it may be, these loans were repaid in certain instances when properties were sold. That seems to be the only legal avenue left enabling investors to recover their investment. Problem with that is that the decision to sell is taken by a board dominated by Sharemax and has to be ratified by special resolution (75% majority) by a general meeting. It follows logically that individual choice of investors is severely hampered.

Given the 30-year payback period written into the respective agreements between private and public companies, it would appear that the early selling of properties was not really part of the game plan at the outset. It only emerged later-on as a contingency strategy, probably as a result of mounting pressure.⁷⁵

It must further be remembered that Sharemax initially boasted unashamedly about the secondary market it had created in the shares and debentures of the various syndication companies. Instead of selling properties this appeared to be the preferential option to create liquidity for investors.

Resale market puzzle

Willie Botha's founding affidavit	Deon Basson's answering affidavit	Prakke report	Stefan Schoeman's affidavit
For every R1000,00 invested by an investor R999,99 is regarded as a loan, whereas the balance is regarded as having purchased the share. The (credit) loan account and the share are linked which compels the investor to sell his shares with the (credit) loan account. Contrary to Respondent's negative assertions there exists a good market for resales. At present it amounts to more than R3m per month. No investor has been unable to relinquish his or her investment promptly. Resales in the first year cost an investor 7% of capital. This is deducted to fund the broker network who produce a substitute investor. Applicant makes nothing on resales. The 7% is thus not raised as a penalty fee... ⁷⁶	Current resales of R3 million per month as suggested by Applicant on a book of R1,5bn equates to an annualized liquidity factor of 1,4% which is modest. Experience with other unlisted companies (such as PSCGG in 2002 and 2003) has shown that once the desire to sell grows there are no guarantees that the demand will be sufficient to entertain all sell orders. It is one of the known and well published inherent risks of an unlisted market. ⁷⁷	The first serious contravention of Sharemax is providing a trading facility for prospective purchasers of already issued and held linked units in current syndications (resale). In order to achieve this Sharemax must accept deposits from the public, offer a trading environment where trading of securities can take place and sellers can meet purchasers. In order to do this Sharemax does not only contravene the Securities Services Act but also the Banks Act...The combined contraventions of these Acts and the Banks Act are serious contraventions. ⁷⁸	I now have actual figures to hand, not merely estimates. As director of administration of Sharemax I can state that resales amounted to R90m for 2005. So even where there were substantially higher number of re-sales than estimated when the founding affidavit were deposed to by Mr Botha, what is clear is that there is a healthy market for re-sales and that no investors were "stuck" with their investment (as can be the case in the unlisted market). The phenomenon of shares in the unlisted market being difficult to dispose of is not applicable to Sharemax. ⁷⁹

Interestingly recent Sharemax prospectuses play down the existence of a secondary market: "Investors themselves are therefore on risk as unlisted shares and the claims (also known as debentures or loans) are not readily marketable and should the company fail this may result in the loss of the investment to the investor."⁸⁰

The statement is clearly much more cautious than the earlier ones by Botha and Schoeman. It cannot be said with certainty that this new approach was a result of Prakke's report. However, it would have made sense to take guidance from regulations published in the Government Gazette in December 1994.⁸¹

The Gazette deals with so-called "commercial paper". By definition the debentures issued by Sharemax syndications appear to be commercial paper in that they are issued in terms of the Companies Act.

The Gazette prohibits market making in unlisted commercial paper with a term of longer than five years. By ACT Solution's version the repayment term of debentures is longer than five years.

Perhaps this goes a long way to explain why Sharemax later-on embarked on a contingency strategy to sell properties. Fact of the matter is, as the clock ticks on, more and more investors would consider cashing in their investments. The number of investors is growing by the day making the risk of a future liquidity squeeze so much greater.

In that context the introduction of the Sharemax Premium product should be considered.

In essence it means that Sharemax opens a corporate savings account with Nedbank for individual investors where they can invest as little as R100 per month.⁸²

Sharemax then pools these contributions of individual investors and make tranche investments in banking deposits, collective investment schemes, bridging finance and (of course) in unlisted property investments.⁸³

The investments are registered in the name of Sharemax Admin (Pty) Ltd.⁸⁴ Key point is that the investor loses control of his or her money as Sharemax Premium is virtually given carte blanche to deal with the savings account.⁸⁵

It is a technical argument whether this is deposit taking activities or not. Forget about the legal form for a moment. In substance this is doing banking and portfolio investment business. It smacks of a desperate attempt by Sharemax to create liquidity.

It is not stated clearly to what extent the monies generated by

Sharemax Premium would be used for secondary deals. It is not as if investors through Sharemax Premium are indemnified from a lack of liquidity themselves: "The client understands that should the client wish to terminate the client mandate while still locked into a tranche or tranches the client will stay in that specific tranche or tranches until that tranche comes to an end." No indication is given how long this may take.

Certainly Masterbond, TEA, Supreme and Sharemax are different in certain respects. But those who nullify or disregard the common characteristics and risk profile would make a grave mistake.

Declaration of interest: Basson is involved in litigation with Sharemax.

Auditing SA

Footnotes

¹ Summarised version of actions taken by the Office for Financial Institutions and the Financial Services Board as quoted in Nel, Mr Justice H.C. The first report of the commission of inquiry into the affairs of the Masterbond Group and investor protection in South Africa, vol. 2, p. 131

² Ibid

³ Ibid, pp. 131-132

⁴ Ibid

⁵ Basson, Deon. Nog 'n skuldbriefdrama. *Finansies & Tegniek*, 9 October 1992, p. 9

⁶ Ibid

⁷ Ibid

⁸ Friedman, Milton. *Capitalism & Freedom*. The University of Chicago Press. Chicago & Londen, 1962, pp. 25-26

⁹ The basic elements of a business opportunity scheme are an invitation to engage or participate in a business (trading) activity, the investment of monies so invited, and the performance by them of work associated with the investment. See Van Eeden Evert Philippus. The regulation of trade practices: A comparative study. Doctor of laws thesis, University of South Africa, Pretoria, 1984, p. 146

¹⁰ Ibid, p. 162. Here the mutual understanding is that the promoter will earn a profit for the investor from some commercial activity. Misrepresentation about the profitability of the scheme is a typical characteristic here.

¹¹ Zirk Engelbrecht swindled many millions of rands from investors during the late 1980's and early 1990's. The author wrote extensively about his activities. He now resides in the USA.

¹² South African Reserve Bank. Total D1900 Forms, line 23. March 2007 www.resbank.co.za retrieved on 17 May 2007

¹³ South African Reserve Bank Quarterly, June 2007, p. S104

¹⁴ Nel, Mr Justice H.C., op cit, vol. 2, p. 2

¹⁵ Ibid

¹⁶ See Basson, Deon Public interest warriors

¹⁷ Nel, Mr Justice H.C., op cit, vol. 2, p. 86

¹⁸ Ibid, p. 4

¹⁹ South African Reserve Bank, Bank Supervision Department, annual report, 2005, p. 29

²⁰ See Companies Act, Act 61 of 1973, sections 141-169

²¹ Nel, Mr Justice H.C., op cit, vol. 1, p. 155

²² Ibid

²³ Ibid

²⁴ Ibid

²⁵ Ibid, p. 156

²⁶ Ibid

²⁷ Ibid, p. 190

²⁸ Ibid

²⁹ Sykes, Trevor. *The Bold Riders - Behind Australia's Corporate Collapses*. Allen & Unwin. Sydney, 1994, pp. 33-55

³⁰ Ibid, p. 34-35

³¹ Ibid, p. 608

³² Ibid

³³ Ibid, p. 35

³⁴ Ibid, p. 36

³⁵ Ibid

³⁶ Ibid, p. 36-37

³⁷ Ibid, p. 37

³⁸ Ibid

³⁹ Ibid

⁴⁰ Ibid, p. 39

⁴¹ Ibid, p. 37

⁴² Ibid, p. 40

⁴³ Ibid

⁴⁴ Ibid, pp. 45-46

⁴⁵ Ibid

⁴⁶ Ibid, p. 53.

⁴⁷ Basson, Deon. Supreme 'n tweede Masterbond. *Finansies & Tegniek*, 27 November 1992, pp. 10-11

⁴⁸ Basson, Deon. Vrae oor Supreme se skuldbriewe. *Finansies & Tegniek*, 24 April 1992, p. 9

⁴⁹ Basson, Deon. Supreme swyg steeds. *Finansies & Tegniek*, 2 Oktober 1992, p. 9

⁵⁰ Basson, Deon. Vrae oor Supreme se skuldbriewe. *Finansies & Tegniek*, 24 April 1992, p. 9

⁵¹ Basson, Deon. Supreme 'n tweede Masterbond. *Finansies & Tegniek*, 27 November 1992, p. 10

⁵² Ibid

⁵³ SA Reserve Bank, Quarterly, December 1997, p. S26

⁵⁴ Basson, Deon. Supreme 'n tweede Masterbond. *Finansies & Tegniek*, 27 November 1992, p. 10

⁵⁵ Basson, Deon. Supreme soek R80m met skuldbriewe. *Finansies & Tegniek*, 6 November 1992, p. 16

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ Basson, Deon. Supreme 'n tweede Masterbond. *Finansies & Tegniek*, 27 November 1992, p. 11

⁵⁹ Basson, Deon. Waarheen is Supreme se geld? *Finansies & Tegniek*, 5 Februarie 1993, p. 9

⁶⁰ Basson, Deon. Supreme-krediteure reg vir groot stryd. *Finansies & Tegniek*, 27 Mei 1994, p. 14

⁶¹ Ibid

⁶² Ibid

⁶³ Ibid

⁶⁴ Ibid

⁶⁵ See Basson, Deon. Public interest warriors

⁶⁶ Transvaal Provincial Division of the High Court. Sharemax Investments vs Deon Basson. Case number 3208/2006. Forensic Accountants Report prepared by A.E. Prakte B. Com CA (SA), p. 109. Paginated papers, p. 1133. Prakte was requested by the author's attorney to compile the report. The author paid for the report.

⁶⁷ Prakte, op cit, p. 108. Paginated papers, p. 1132

⁶⁸ ACT Audit Solutions. Report from the Independent Auditors of Sharemax Investments (Pty) Ltd, p. 7. Annexure 28 to Willie Botha's second founding affidavit in case number 3208/2006. ACT Audit Solutions are the auditors of Sharemax and the various syndication companies.

⁶⁹ Basson, Deon. Public interest warriors

⁷⁰ Ibid

⁷¹ Prakte, op cit, pp. 94-95. Paginated papers, pp. 1118-1119

⁷² ACT Audit Solutions, op cit, pp. 4-5

⁷³ Prospectus of Waterglen Shopping Centre Holdings, pp. 16-17. Case number 3208/2006. Paginated papers, pp. 1233-1234

⁷⁴ Ibid

⁷⁵ Basson, Deon. Public interest warriors

⁷⁶ Botha's first founding affidavit (case number 3208/2006), op cit, par. 26. Paginated papers, p. 20

⁷⁷ Basson's answering affidavit, op cit, par. 61. Paginated papers, p. 448

⁷⁸ Prakte, op cit, pp. 124-125. Paginated papers, pp. 1148-1149. ACT Audit Solutions did not contest the serious allegations made by Prakte here.

⁷⁹ Stefan Schoeman's unsigned undated partially completed replying affidavit (case number 3208/2006), par. 79. Schoeman's "affidavit" was attached to a second (undated) founding affidavit by Willie Botha (probably February 2007) where Sharemax launched an application to have its own original application for an interdict against Deon Basson struck from the roll. It asked that Basson should pay the costs. The matter was not heard.

⁸⁰ Prospectus of Rivonia Square Shopping Mall Holdings, p. 1

⁸¹ Government Gazette No. 16167, 14 December 1994

⁸² Sharemax Premium modus operandi, p. 16

⁸³ Ibid and Sharemax Premium client mandate, p. 18

⁸⁴ Sharemax Premium modus operandi, p. 16

⁸⁵ Sharemax Premium client mandate, p. 18