

**BOARD NOTICE 28 OF 2018**

**AGRICULTURAL PRODUCE AGENTS COUNCIL**

**RULES IN RESPECT OF LIVESTOCK AGENTS**

It is hereby made known that -

- (a) the rules set out in the Schedule have been made under section 10(b) of the Agricultural Produce Agents Act, 1992, (Act No. 12 of 1992) ("the Act"), read with section 22(2) and (3) of the said Act;
- (b) the rules shall come into effect on the date of publication hereof in the Gazette.

**L PRETORIUS**

Registrar of Agricultural Produce Agents.

**A. Arrangement of Rules-**

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**PART 1: DEFINITIONS****1 Definitions and Interpretation**

(1) In these rules, any word or expression to which a meaning has been assigned in the Act, unless the context otherwise indicates, shall have that meaning and the following words shall have the following meanings -

“**auditor**” has the meaning set out in the Auditing Profession Act, 2005 (Act 26 of 2005);

“**bank**” means a bank registered as such in terms of the Banks Act, 1990 (Act No. 94 of 1990), referred to in the Act as a “deposit taking institution”;

“**conflict of interest**” includes any situation in which a livestock agent or an employee has an actual or potential interest that may, in rendering a service to a principal -

(a) influence the objective performance of his obligations to that principal; or

(b) prevent a livestock agent or employee from rendering an unbiased and fair service to that principal, or from acting in the best interests of that principal including, but not limited to-

(i) a financial interest;

(ii) an ownership interest;

(iii) any relationship with a third party;

“**employee**” means a person employed by a livestock agent for the purposes of selling or buying livestock on behalf of the principal of his employer;

“**financial interest**” means a direct interest of a financial, monetary or economic nature, or to which a monetary value may be attributed, other than an immaterial financial interest;

“**livestock**” means agricultural produce of the kinds specified in Part B of Schedule 1 of the Act;

**“immaterial financial interest”** means any financial interest with a determinable monetary value, the aggregate of which does not exceed R10 000 (ten thousand Rand) in any calendar year from the same third party in that calendar year received by-

(a) a livestock agent; or

(b) an employee for his direct or indirect benefit;

(c) a livestock agent, who for its benefit or that of some or all of its employees, aggregates the immaterial financial interest paid to its employees;

**“interrelated”**, when used in respect of three or more persons, means persons who are related to one another in a linked series of relationships, such that two of the persons are related in the manner contemplated in sub-rule (4), and one of them is related to the third in any such manner, and so forth in an unbroken series;

**“juristic person”** includes –

(a) a foreign company; and

(b) a trust, irrespective of whether or not it was established within or outside the Republic;

**“ownership interest”** means-

(a) any equity or proprietary interest, owned by a livestock agent, other than equity or a proprietary interest held as an approved nominee on behalf of another person; and

(b) includes any dividend, profit share or similar benefit derived from that equity or ownership interest;

**“public regulation”** means any national, provincial or local government legislation or subordinate legislation, or any license, permit, directive or similar authorisation issued by a regulatory authority or pursuant to any statutory authority;

“**related**” when used in respect of two persons, means persons who are connected to one another in any manner contemplated in sub-rule (6) below;

“**the Act**” means the Agricultural Produce Agents Act, 1992 (Act No. 12 of 1992);

“**third party**” means any person, other than the principal concerned, who in terms of an agreement or arrangement with a livestock agent or an employee or a person related to a livestock agent or an employee, provides a financial interest to a livestock agent or any of its employees or to any person related to a livestock agent or an employee, whether such financial interest relates to a specific transaction or to the occupation of the livestock agent in general;

“**writing**” includes communication by telefax or any appropriate electronic medium that is accurately and readily reducible to written or printed form; and '**written**' has a corresponding meaning.

- (2) When, in these Rules a particular number of "business days" is provided for between the happening of one event and another, the number of days must be calculated by-
- (a) excluding the day on which the first such event occurs;
  - (b) including the day on or by which the second event is to occur; and
  - (c) excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in paragraphs (a) and (b), respectively.
- (3) These Rules must be construed -
- (a) in conjunction with the provisions of the Act and in a manner conducive to the promotion and achievement of the objectives of the Act; and
  - (b) as being in addition to any other law not inconsistent with these provisions and not as replacing any such law.

- (4) In the case of any inconsistency or conflict between a provision of these Rules and a provision of any other law specifically regulating conduct pertaining to the rendering of services by livestock agents in respect of livestock, the provisions of that other law, unless inconsistent or in conflict with the Rules, shall prevail.
- (5) The provisions of these Rules apply, unless stated otherwise herein or otherwise by law, to all livestock agents and employees notwithstanding where they practice their occupation, and irrespective of the nature of their remuneration.
- (6) For purposes of these Rules-
- (a) an individual is related to another individual if they –
- (i) are married, or live together in a relationship similar to a marriage; or
- (ii) are separated by no more than two degrees of natural or adopted consanguinity or affinity;
- (b) an individual is related to a juristic person if the individual directly or indirectly controls the juristic person, as determined in accordance with sub-rule (7); and
- (c) a juristic person is related to another juristic person if-
- (i) either of them directly or indirectly controls the other, or the business of the other, as determined in accordance with sub-rule (7);
- (ii) either is a subsidiary of the other; or
- (iii) a person directly or indirectly controls each of them, or the business of each of them, as determined in accordance with sub-rule (7).
- (7) For the purpose of this sub-rule (7), a person controls a juristic person, or its business, if-
- (a) in the case of a juristic person that is a company-

- (i) that juristic person is a subsidiary of the first person, as determined in accordance with section 3(1)(a) of the Companies Act, 2008; or
- (ii) the first person together with any related or interrelated person, is-
  - (aa) directly or indirectly able to exercise or control the exercise of a majority of the voting rights associated with securities of that company, whether pursuant to a shareholder agreement or otherwise; or
  - (bb) has the right to appoint or elect, or control the appointment or election of, the directors of that company who control a majority of the votes at a meeting of the board of that company;
- (b) in the case of a juristic person that is a close corporation, that first person owns the majority of the members' interests, or controls directly, or has the right to control, the majority of members' votes in the close corporation;
- (c) in the case of a juristic person that is a trust, that first person has the ability to control the majority of the votes of the trustees or to appoint the majority of the trustees, or to appoint or change the majority of the beneficiaries of the trust; or
- (d) that first person has the ability to materially influence the policy of the juristic person in a manner comparable to a person who, in ordinary commercial practice, would be able to exercise an element of control referred to in paragraph (a), (b) or (c).
- (8) For all purposes of these Rules, the male gender shall include the female and neuter genders and vice versa.

## **PART II: CODE OF CONDUCT FOR LIVESTOCK AGENTS AND EMPLOYEES**

### **2 Fiduciary duty and Conflict of Interest**

- (1) Every livestock agent and every employee owes a fiduciary duty to his principal and must, therefore, at all times render his services-
  - (a) honestly and in good faith;

- (b) with due skill, care and diligence reasonably expected of a person-
- (i) carrying out the same functions in relation to the principal as those carried out by that livestock agent or that employee, whichever is the case; and
- (ii) having the general knowledge, skill and experience of that livestock agent or that employee, whichever is the case; and
- (c) subject to the provisions of rule 2(8) below, in the best interests of his principal.
- (2) Subject to the provisions of these rules, a livestock agent and an employee must at all times avoid a conflict of interest between his and his employer's personal interests and their principal's interests, and this involves that he must-
  - (a) not make secret profits and he must account to his principal for profits;
  - (b) not misappropriate opportunities intended for his principal;
  - (c) not unreasonably compete with his principal;
  - (d) disclose financial interests and ownership interests;
  - (e) communicate to his principal at the earliest opportunity any relevant information that comes to his attention, unless he reasonably believes that such information is immaterial to the principal or is generally available to the public, or known to his principal.
- (3) A livestock agent and an employee must avoid and where this is not possible, mitigate and disclose, in writing, any conflict of interest between the livestock agent and his principal or the employee and the said principal;
- (4) A livestock agent and an employee must, in writing, and within 10 (ten) business days after he has been employed or mandated by his principal or if he is already so employed or mandated, at the earliest reasonable opportunity-

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- (a) disclose to his principal the nature and extent of any conflict of interest in respect of that principal to be used for purposes of this rule until changed or withdrawn by further notice from that livestock agent or employee, including-
- (i) the measures taken or to be taken, in accordance with the conflict of interest management policy of the livestock agent referred to in rule 4(1), to avoid or mitigate the conflict;
- (ii) any financial interest, other than an immaterial financial interest, that the livestock agent and/or any one of his employees may have or may become eligible for, including its general nature and any material information relating thereto;
- (iii) the nature of any relationship or arrangement with a third party that gives rise to a conflict of interest, in sufficient detail to his principal to enable the principal to understand the exact nature and extent of the relationship or arrangement and the nature and extent of the conflict of interest;
- (b) inform his principal of the conflict of interest management policy referred to in rule 4(1) and how it may be accessed.
- (5) When a livestock agent or an employee renders a service to his principal the livestock agent and the employee involved, must not directly or indirectly deal in any livestock of his principal for his own benefit, account or interest to the detriment of his principal.
- (6) A livestock agent shall maintain an impartial approach in practicing his occupation, and for this purpose be free of any influence or relationship that, either directly or indirectly, could impair his judgment or independence.
- (7) A livestock agent shall maintain such integrity and objectivity in the practicing of his occupation as is necessary to enable him to apply unbiased judgment and objective consideration in forming an opinion or arriving at decisions.
- (8) A livestock agent shall not unduly discriminate between principals.



### 3. **Financial Interests**

- (1) A livestock agent or its employees may only receive or offer the following financial interest from, or to a third party-
- (a) any consideration, if the receipt or payment of that consideration has been specifically approved by a principal in writing following proper disclosure of that interest in the manner contemplated in rule 2(4)(a)(iii) above, or despite having been approved without proper disclosure of that interest, it has subsequently been ratified by the principal concerned in writing following proper disclosure of that interest; provided however that such approval may be withdrawn at the discretion of that principal on giving the livestock agent at least 40 (forty) business days' written notice of his intention to do so; provided further, that such withdrawal shall not bar the livestock agent from receiving any consideration which he became entitled to receive, before he was so notified. Notwithstanding anything to the contrary herein, under no circumstances whatsoever shall a livestock agent or an employee be permitted, after having received the notice referred to above, to sell his principal's livestock to, or, procure, for and on behalf of his principal, services from a business or juristic person in which the livestock agent or employee or a person related to that livestock agent or that employee has a financial interest.
- (b) fees or remuneration for the rendering of a service by a third party, which fees or remuneration are reasonably commensurate to the service being rendered
- (c) subject to any other law, an immaterial financial interest; and
- (d) a financial interest, not referred to under subparagraph (a) to (c) above, for which a consideration, fair value or remuneration that is reasonably commensurate to the value of the financial interest, is paid, promised, given or offered by that livestock agent or employee at the time of receipt thereof.
- (2) A livestock agent may not give, and may not offer any financial interest to an employee of that livestock agent for giving, promising or offering –

- (a) undue preference to the quantity of business secured for the livestock agent to the detriment of the quality of the service rendered to principals; or
- (b) undue preference in whatever manner to a specific principal or to the livestock of a specific principal, to the detriment of another principal represented by that livestock agent.
- (3) When a livestock agent or an employee acquires a financial interest in any agreement or other matter in which his principal has a material interest, or knows that a related person has acquired a financial interest in that matter, after the agreement or other matter has been approved by the principal concerned, the livestock agent or employee, as the case may be, must promptly disclose to the principal concerned, the nature and extent of that interest, and the material circumstances relating to the livestock agent's or employee's or a related person's acquisition of that interest.

#### **4 Conflict of Interest Management Policy**

- (1) Every livestock agent, other than an employee, must adopt, maintain and implement a conflict of interest management policy that complies with the provisions of the rules, and a copy thereof must be made available to the Registrar once it has been adopted in terms of rule 4(3) below.
- (2) A conflict of interest management policy must-
  - (a) provide for the management of conflicts of interest;
  - (b) include mechanisms for the identification of conflicts of interest;
  - (c) include measures for the avoidance of conflicts of interest, and where avoidance is not possible, the reasons therefore and the measures for the mitigation of such conflicts of interest;
  - (d) include measures for the disclosure of conflicts of interest;
  - (e) include processes, procedures and internal controls to facilitate compliance with the policy;

- (f) describe consequences of non-compliance with the policy by the livestock agent's employees;
  - (g) include a list of all its related persons;
  - (h) include the names of any third parties in which the livestock agent holds an ownership interest or a financial interest;
  - (i) include the names of any third parties that hold an ownership interest or a financial interest in the livestock agent;
  - (j) include the nature and extent of the ownership interest or financial interest referred to in subparagraphs (h) and (i) above; and
  - (k) be drafted in an easily comprehensible form and manner.
- (3) A conflict of interest management policy must be adopted by the sole proprietor of a livestock agent, the board of directors of a livestock agent which is a company or, in the case where a livestock agent is not a company, the governing body of that livestock agent.
- (4) A livestock agent must ensure that its employees are aware of the contents of its conflict of interest management policy and provide for appropriate training and educational material in this regard.
- (5) A livestock agent must continuously monitor compliance with its conflict of interest management policy and annually conduct a review of the policy.
- (6) A livestock agent must inform his principals in writing that he has adopted a conflict of interest management policy in appropriate media and ensure that it is made available to his principals at their written request and is also easily accessible for public inspection at all reasonable times.
- (7) A livestock agent or employee may not avoid, limit or circumvent or attempt to avoid, limit or circumvent compliance with this rule through an associate or an arrangement involving an associate.

- (8) The livestock agent, must on annual basis and before 31 August of each year, provide the Registrar with a written report on the livestock agent's conflict of interest management policy, such report to deal with the matters referred to in rule 4(2)(f) – (j) and rule 4(6) above, and must include a statement confirming compliance with rule 4(5) above, and if any changes have been made to the conflict of interest management policy, such changes must be brought to the attention of the Registrar.
- (9) The report referred to in sub-rule (8) must report on at least the implementation, monitoring and compliance with, and the accessibility of the conflict of interest management policy.

## **5 Other duties of livestock agents and employees**

- (1) When a livestock agent or an employee renders a service to his principal-
- (a) representations made and information provided to a principal by the livestock agent or the employee-
- (i) must be factually correct;
- (ii) must be provided in plain language, avoid uncertainty or confusion and not be misleading;
- (iii) must be adequate and appropriate in the circumstances of the particular type of service, taking into account the level of knowledge of the principal;
- (iv) must be provided timeously so as to afford the principal reasonably sufficient time to make an informed decision;
- (v) may, subject to the provisions of these Rules, be provided orally and, at the principal's written request, confirmed in writing within a reasonable time after such request;

- (vi) must, where provided in writing or by means of standard forms or format, be in a clear and readable print size, spacing and format;
- (vii) must, as regards all amounts, sums, values, charges, fees, remuneration or monetary obligations mentioned or referred to therein and payable to a third party or to the livestock agent, be reflected in specific monetary terms; provided that where any such amount, sum, value, charge, fee, remuneration or monetary obligation is not reasonably pre-determinable, its basis of calculation must be adequately described; and
- (viii) need not be duplicated or repeated to the same principal unless material or significant changes affecting that principal occur, or the nature of the service renders it necessary, in which case a disclosure of the changes to the principal must be made without delay;
- (b) he must disclose to his principal whether the livestock agent holds guarantees or professional indemnity or fidelity insurance cover or not and, if so, the nature and extent thereof;
- (c) he must disclose to his principal by way of a separate disclosure (and not mere disclosure of an all-inclusive fee or charge) of any charges and fees to be levied against that principal for any service rendered or to be rendered, including-
  - (i) the amount, rate or basis of calculation and the frequency of payment thereof;
  - (ii) particulars of the identity of the recipient of such fees or charges but only if so demanded by his principal, in writing, and then within 20 (twenty) business days of that written demand; and
- (iv) the services or other purpose for which each fee or charge is levied;
- (v) the nature, extent and frequency of any incentive, remuneration, consideration, commission, fee or brokerages ('valuable consideration'), which will or may become payable to the livestock agent or an employee or person related to the livestock agent or employee, directly or indirectly, by any third party, or for which the livestock agent, employee, or person related to the livestock agent or

employee, may become eligible, as a result of rendering of the services, as well as the identity of the third party providing or offering the valuable consideration;

- (d) the services must be rendered in accordance with the contractual relationship and/or reasonable requests or instructions of the principal, which must be executed as soon as reasonably possible and with due regard to the interests of the principal which must be afforded appropriate priority over any interests of the livestock agent and the employee; and
  - (e) all transactions of whatever nature concluded on behalf of a principal must be accurately and timeously accounted for.
- (2) A livestock agent and an employee, on behalf of the livestock agent, must-
- (a) in making contact arrangements, and in all communications and dealings with his principal, act honorably, professionally and with due regard to the convenience of his principal; and
  - (b) at the commencement of any contact, visit or call initiated by the livestock agent, explain the purpose thereof.
- (3) Notwithstanding the provisions of rule 5 (1) above, the livestock agent shall within 10 (ten) business days of being mandated by his principal procure that he and his principal execute and sign a service level agreement setting out the terms and conditions governing their relationship or in the absence of such signed a service level agreement the livestock agent must communicate in writing to his principal the terms and conditions governing their relationship which shall as a minimum include (but not be limited to) the following-
- (a) the identity of the livestock agent and each representative of the livestock agent if the livestock agent is a juristic person and the registration number (if any), physical address, postal address, telephone number, e-mail address, facsimile number and VAT registration number of the livestock agent;

- (b) the identity of the principal and each representative of the principal if the principal is a juristic person and the registration number (if any), physical address, postal address, telephone number, e-mail address, facsimile number and VAT registration number of the principal;
  - (c) the duties, responsibilities and risk attributable to each party;
  - (d) the nature, manner and basis in which the price payable for livestock is to be calculated, and if the livestock agent and the principal agree on a minimum guaranteed price, this fact should be stipulated on a separate document which is to be signed by both parties and which document should as a minimum stipulate who bears the risk should the minimum guaranteed price not be achieved;
  - (e) the liability of the principal and/or livestock agent for damages and/or losses suffered by the principal;
  - (f) full particulars of the insurance (as contemplated in rule 10 below) held by the livestock agent;
  - (g) full and comprehensive details of the payment terms; and
  - (h) the particulars referred to in rule 5(1)(c)(iv) above.
- (4) A livestock agent must have appropriate procedures and systems in place to-
- (a) record such verbal and written communications and reports relating to a service rendered to a principal as are contemplated in the Act or in these Rules;
  - (b) store and retrieve such records and any other material documentation relating to the principal or services rendered to the principal; and
  - (c) keep such records, reports and documentation safe from destruction.
- (5) All such records must be kept for a period of five years after the rendering of the service concerned.

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- (6) Livestock agents are not required to keep the records at their premises but must ensure that they are available for inspection within 5 (five) business days of the Registrar's request.
- (7) Records may be kept in an appropriate electronic or recorded format, which are accessible and readily reducible to written or printed form.
- (8) A livestock agent and an employee may not disclose any confidential information acquired or obtained from a principal in regard to such principal, unless the prior written consent of the principal has been obtained or disclosure of the information is required in the public interest or under any law.
- (9) A livestock agent shall maintain his knowledge and skills at such a level that he is able to conduct his business in accordance with the applicable laws, regulations and rules as well as the technical and professional standards common to his occupation.
- (10) A livestock agent shall-
- (a) ensure that his employees comply with the laws, regulations and rules applicable to his occupation, and for that purpose he shall-
  - (b) provide the necessary training to his employees;
  - (c) adequately supervise his employees;
  - (d) procure that each livestock agent and each employee shall attend all regulatory courses and pass all regulatory examinations or training set by or on behalf of the Council within the period determined by the Registrar, but in the case of a livestock agent not later than 12 (twelve) months after that livestock agent has been issued with a registration certificate.
  - (e) bring to the attention of the Council and other responsible authorities any non-compliance or suspected non-compliance of applicable laws, regulations or rules by his employee or by other livestock agent and shall furnish the Council with copies of all documentation which could be used to support such alleged non-compliance or suspected non-compliance;



- (f) at all times whilst acting on behalf of his principal, act in a transparent manner.

## **6 INFORMATION ABOUT SERVICE PROVIDERS**

- (1) A livestock agent must on demand whenever his principal or the Registrar so requires in writing, furnish the principal or the Registrar, as the case may be, in writing with full particulars of the following information about all service providers contracted or utilised on behalf of or for the benefit of the principal during the previous 3 (three) years-
- (a) name, physical location, and postal, telephone and e-mail contact details of the service provider;
  - (b) the nature and extent of his or a related person's contractual relationship with that service provider (if any), and whether the livestock agent has contractual relationships with other service providers;
  - (c) where applicable, the fact that the livestock agent -
    - (i) directly or indirectly holds more than 10% (ten percent) of the relevant service provider's shares, or has any equivalent substantial financial interest in the service provider;
    - (ii) during the preceding 12 (twelve) month period received more than 30% (thirty percent) of his total income, including commission, from the service provider, and the livestock agent must convey any changes thereafter in regard to such information at the earliest opportunity to the principal and the Registrar.
- (2) A livestock agent must, where the relevant, terms of employment or mandate enables such livestock agent to provide principals with services in respect of a choice of service providers, exercise judgment objectively in the interest of the principal concerned.

- (3) A livestock agent may not, in dealing with a principal, compare different service providers or livestock agents unless the differing characteristics of each are made clear, and may not make inaccurate, unfair or unsubstantiated criticisms of any service provider or livestock agent.

## **7 INFORMATION ON BUYERS TO WHOM CREDIT WAS GRANTED**

- (1) Where a livestock agent in compliance with such policies on the granting of credit as the Council may from time to time implement and with the prior written consent of his principal and on his principal's behalf and at the risk of the principal grants credit to a buyer, the livestock agent must at the written request of his principal furnish the principal with full particulars of the following information and, where such information is provided orally, must confirm such information within 5 (five) business days in writing-
- (a) full business and trade names, registration number (if any), postal and physical addresses, telephone and, where applicable, cellular phone number, and internet and e-mail addresses, in respect of that buyer, as well as the names and contact details of appropriate contact persons or offices;
- (b) a copy of a document which records the amount for which, the terms and conditions on which, and the period (not to exceed the period referred to in rule 31(5) below) for which credit was granted;
- (c) concise details of the legal and contractual status of the buyer, and whether the livestock agent holds guarantees or any other form of security for the outstanding debt or not, to be provided in a manner which can reasonably be expected to make it clear to the principal which person or entity accepts responsibility for the payment of the outstanding debt and the extent to which the principal will have to accept such responsibility.

## **8 INFORMATION ABOUT SERVICES RENDERED**

- (1) Subject to the provisions of these rules, a livestock agent must where applicable, at the written request of a principal, provide the principal with a copy

of the statement of account referred to in Rule 28 below, reflecting all services rendered to his principal or on behalf of his principal.

- (2) No livestock agent may in the course of the rendering of a service request any principal to sign any written or printed form or document unless all essential details required to be inserted thereon by the principal or on behalf of the principal have already been inserted.

## **9 ACCESS TO INFORMATION**

- (1) In the event of any other public regulation requiring a person acting as a livestock agent to keep and retain the information referred to in these Rules, then such livestock agent shall be deemed to have complied with the provisions of these Rules, if and to the extent that the said livestock agent complied with the said public regulation, provided that such other public regulation is in this regard not less onerous than these Rules.
- (2) The rights of access to information set out in this rule are in addition to, and not in substitution for, any rights a principal may have to access information in terms of –
- (i) section 32 of the Constitution of the Republic of South Africa, 1996;
  - (ii) the Promotion of Access to Information Act, 2000 (Act 2 of 2000); or
  - (iii) any other public regulation.

## **10 RISK MANAGEMENT**

### **Control measures**

- (1) A livestock agent must at all times have and effectively employ such resources, procedures and appropriate technological systems that can reasonably be expected to eliminate as far as reasonably possible, the risk that principals will suffer loss or damage through theft, fraud, other dishonest acts, negligence, or other culpable omissions.

**Specific control objectives**

- (2) A livestock agent, excluding an employee, must, without limiting the generality of sub-rule (1), structure his internal control procedures so as to provide reasonable assurance that-
- (a) the relevant business can be carried on in an orderly and efficient manner;
  - (b) financial and other information used or provided by the livestock agent will be reliable;
  - (c) all funds will be properly and timeously accounted for; and
  - (d) all applicable laws and rules will be complied with.
- (3) A livestock agent must-
- (a) display a certified copy of each registration certificate issued to him and to every employee in a prominent and durable manner within every business premises of the livestock agent;
  - (b) ensure that a reference to the fact that such a registration certificate is held by such livestock agent, is contained in all business documentation, advertisements and other promotional material;
  - (c) ensure that all registration certificates are at all times immediately or within a reasonable time available for production to any person requesting proof of registration under authority of a law or for the purpose of entering into a business relationship with the livestock agent.

**Insurance**

- (1) A livestock agent shall consult with his principal regarding the matters stipulated in this sub-rule and shall, to the extent reasonably required by his principal in writing, maintain in force a suitable guarantee acceptable to his principal or professional indemnity or fidelity insurance cover, to cover his principal against -

- (a) the risk of losses or damages suffered due to theft committed by the livestock agent or his staff of any monies or livestock handed over by or on behalf of his principals to him; and
  - (b) the risk of losses or damages suffered due to dishonest conduct by a livestock agent or his staff insofar as such conduct relates to monies or livestock handed over by or on behalf of his principal to him.
- (2) Full details of the guarantee or insurance cover obtained must be provided, in writing, by the livestock agent upon written request by the principal or the Council, and such details are to include a copy of the certificate of insurance or guarantee (as the case may be), and provided further that any change in such details shall forthwith be communicated by the livestock agent to his principal and to the Council.
- (3) In the event of a claim, the livestock agent shall process the claim fully and use all reasonable endeavors to succeed in such claim. Any excess deductible from the claim value shall be for the principal's account.

## **11 Remuneration**

- (1) No livestock agent may claim remuneration in an amount or at a higher price, rate or scale than the agreed remuneration, unless the prior written approval of the principal has been obtained.
- (2) A livestock agent shall not –
- (a) overreach his principal in any manner whatsoever;
  - (b) charge remuneration or recover costs or expenses at an amount, rate or scale which in the view of the Council is unreasonably high, having regard to all relevant circumstances.
  - (c) present any remuneration as a cost or an expense which is not normally regarded as a cost or expense.

**12 Acceptance of gifts**

No livestock agent or a member of his family shall otherwise than in accordance with generally accepted business practices accept any goods, service or hospitality that results or could result in a conflict of interest or an impairment of his independent judgment in the practicing of his occupation.

**13 Financial obligations**

A livestock agent shall at all times ensure that financial obligations incurred by him will not impair or cause to impair his independence.

**14 Publicity and advertisements**

- (1) A livestock agent may by means of publicity and advertisements bring his business and the nature of the services rendered by him to the notice of the public, provided –
  - (a) a due sense of responsibility towards the industry and the public is displayed therein; and
  - (b) the contents and presentation thereof in the opinion of the Council, bear testimony of good taste, and
  - (c) the livestock agent concerned does not draw comparisons with or disparage the services of other livestock agents.
- (2) An advertisement by any livestock agent must-
  - (a) not contain any statement, promise or forecast which is fraudulent, untrue or misleading;
  - (b) if it contains-
    - (i) performance data (including awards and rankings), include references to their source and date;
    - (ii) illustrations, forecasts or hypothetical data-

- (aa) contain support in the form of clearly stated basic assumptions (including but not limited to any relevant assumptions in respect of performance, turnover, costs and charges) with a reasonable prospect of being met under current circumstances; and
- (bb) make it clear that they are not guaranteed and are provided for illustrative purposes only.
- (iii) information about past performances, also contain a warning that past performances are not necessarily indicative of future performances.

## **15 Canvassing and touting**

A livestock agent may canvass for business on condition that he does not —

- (a) propagate any false or misleading or questionable information of any nature whatsoever;
- (b) interfere directly or indirectly with the sale, handling or inspection of livestock handed over for sale to another livestock agent;
- (c) directly or indirectly influence purchasers not to buy certain livestock, from a certain livestock agent, or from a certain principal, unless he can show good cause therefore.

## **16 Relations with other livestock agents, principals and the Council**

- (1) The behavior of a livestock agent towards other livestock agents, his principals and the Council shall be of such nature that it will foster co-operation and good relations.
- (2) A livestock agent shall not, express any malicious or unfounded criticism on the activities of another livestock agent.
- (3) No livestock agent shall receive, accept or handle any livestock dispatched to or intended for delivery to or sale by another livestock agent unless such other livestock agent does not have a representative to accept the delivery, and then only after all reasonable attempts have been made to notify the livestock agent concerned of that delivery.

**PART III: COMPLAINTS AND WAIVER OF RIGHTS****17 General**

(1) In rules 17-20 -

**'complaint'** means a specific complaint relating to a service rendered by a livestock agent or employee to the complainant or to the conduct of a livestock agent or employee and in which complaint it is alleged that the livestock agent or employee-

- (a) has contravened or failed to comply with a provision of the Act or of these rules irrespective of whether as a result thereof the complainant has suffered or is likely to suffer loss or damage;
- (b) has willfully or negligently rendered a service to the complainant which has caused loss or damage to the complainant or which is likely to result in such loss or damage; or
- (c) has treated the complainant unfairly, unprofessionally or improperly;
- (d) has through any other act or omission conducted himself unprofessionally, improperly or disgracefully.

**'internal complaint resolution system and procedures'**, in relation to a livestock agent and a person, means the system and procedures established and maintained by the livestock agent in accordance with these rules for the resolution of complaints by principals or other persons;

**'resolution'**, or **'internal resolution'**, in relation to a complaint and a livestock agent, means the process of the resolving of a complaint through and in accordance with the internal complaint resolution system and procedures of the livestock agent;

(2) A livestock agent must-

- (a) request that any person who has a complaint against the livestock agent must lodge such complaint in writing;



- (b) maintain a record of such complaints for a period of five years;
- (c) handle complaints in a timely and fair manner;
- (d) take steps to investigate and respond promptly to such complaints; and
- (e) where such a complaint is not resolved to the complainant's satisfaction, advise the complainant that other steps are available to the complainant in terms of the Act and these rules.

### **18 Basic principles of systems and procedures**

A livestock agent, excluding an employee must maintain an internal complaint resolution system and procedures based on the following-

- (a) maintenance of a comprehensive complaints policy outlining the livestock agent's commitment to, and system and procedures for, internal resolution of complaints;
- (b) transparency and visibility: ensuring that complainants have full knowledge of the procedures for resolution of their complaints;
- (c) accessibility of facilities: ensuring the existence of easy access to such procedures at any office or branch of the livestock agent open to clients, or through ancillary postal, fax, telephone or electronic helpdesk support; and
- (d) fairness: ensuring that a resolution of a complaint can during and by means of the resolution process be effected which is fair to both complainants and the livestock agent and its staff.

### **19 Resolution of complaints**

The internal complaint resolution system and procedures of the livestock agent must be designed to ensure the existence and maintenance of at least the following for purposes of effective and fair resolution of complaints-

- (a) availability of adequate manpower and other resources;

- (b) adequate training of all relevant staff, including imparting and ensuring full knowledge of the provisions of the Act, and the rules with regard to resolution of complaints;
- (c) ensure that responsibilities and mandates are delegated to facilitate complaints resolution of a routine nature;
- (d) ensure that there is provision for the escalation of non-routine serious complaints and the handling thereof by staff with adequate expertise;
- (e) internal follow-up procedures to ensure avoidance of occurrences giving rise to complaints, or to improve services and complaint systems and procedures where necessary.

## **20 Specific obligations**

- (1) Subject to the other provisions of rules 17 - 20, the internal complaint resolution system and procedures of a livestock agent must contain arrangements which-
  - (a) must-
    - (i) reduce the details of the internal complaint resolution system and procedures of the livestock agent, including all subsequent updating or upgrading thereof, to writing;
    - (ii) provide that access to the procedures is at all times available to complainants at any relevant office or branch of the livestock agent, or by electronic medium, and that such availability is appropriately made known by public press or electronic announcements or separate business communications to existing principals;
    - (vi) include in the details envisaged in subparagraph (i), a reference to the duties of the livestock agent and the rights of a complainant set out in rules 17 to 20 above;
    - (iv) include in such details a clear summary of the provisions of the Act, which will apply whenever the complainant, after dismissal of a complaint by the livestock agent, wishes to pursue further proceedings before the Council; and

- (v) include in such details the name, address and other contact particulars of the Registrar;
- (b) must stipulate that complaints must, if possible, be submitted in writing and must contain all relevant information, and that copies of all relevant documentation must be attached thereto;
- (c) must provide that the receipt of complaints is promptly acknowledged in writing to the complainant, with communication particulars of contact staff to be involved in the resolution of the complaint, and are properly internally recorded by the relevant staff for purposes of compliance with rule 20(3) below;
- (d) must make provision that after the receipt and recording of a particular complaint, the complaint will as soon as practically possible be forwarded to the relevant staff appointed to consider its resolution, and that-
  - (i) the complaint receives proper consideration;
  - (ii) appropriate management controls are available to exercise effective control and supervision of the consideration process;
  - (iii) the complainant is informed of the results of the consideration within six weeks of receipt of a complaint; provided that if the outcome is not favourable to the complainant, full written reasons must be furnished to the complainant within six weeks of receipt of a complaint, and the complainant must be advised that the complaint may within six months be pursued with the Council whose name, address and other contact particulars must simultaneously be provided to the complainant.
- (2) In any case where a complaint is resolved in favor of a complainant, the livestock agent must ensure that a full and appropriate level of redress is offered to the complainant without any delay.
- (3) A livestock agent must maintain records for a minimum period of five years regarding complaints received, together with an indication whether or not any such complaint has been resolved.

## **21 Termination of Agreement or Business**

- (1) A livestock agent must –
  - (a) subject to any contractual obligations, give immediate effect to a request of a principal who voluntarily seeks to terminate any agreement or mandate with the livestock agent;
  - (b) where the principal makes the request on the advice of the livestock agent, the livestock agent must take reasonable steps to ensure that the principal fully understands all the implications of the termination;
- (2) A livestock agent, other than an employee, who ceases to operate as such, must immediately notify all affected principals accordingly and take, where reasonably necessary or appropriate in consultation with the principals, reasonable steps to ensure that any outstanding business is completed promptly or transferred to another livestock agent selected by the affected principals; and
- (3) Where an employee ceases to be employed by that livestock agent, such livestock agent must immediately take, where reasonably necessary or appropriate in consultation with the employee concerned, reasonable steps to notify all affected principals accordingly and ensure that outstanding business is completed or transferred to another employee of that livestock agent or such other livestock agent as selected by the principal concerned.

## **22 Waiver of Rights**

No livestock agent may request or induce in any manner his principal to waive any right or benefit conferred on his principal by or in terms of any provision of the Act or these Rules, or recognise, accept or act on any such waiver by the principal, and any such waiver is null and void.

**PART IV: REGISTRATION CERTIFICATES****23 Applications for registration certificates**

- (1) An application for a registration certificate shall be made every 2 (two) years, not later than 20 (twenty) business days before each anniversary of the date of issue of the registration certificate concerned on a form available from the Council for this purpose.
- (2) Such form shall –
- (a) be completed in full in accordance with the directions indicated thereon, and shall be signed by the applicant or by a person duly authorised thereto, on behalf of the applicant;
  - (b) be accompanied by-
    - (i) the applicable application fee determined by the Council for this purpose, as well as the other applicable particulars and documents indicated thereon; and
    - (ii) a tax clearance certificate issued to the applicant by the South African Revenue Services which tax clearance certificate is not older than 3 (three) months since date of issue;
  - (c) be forwarded by post to the Council to, or be delivered to the Council at, the address indicated thereon; and
  - (d) authorise holders of personal data to furnish information regarding the applicant's credentials to the Council and/or its duly authorised verification agent.
- (3) In order to determine whether the applicant and the persons referred to in sub-rule 5 (a) below are fit and proper persons, the application form submitted to the Council shall provide particulars of such persons and shall also deal with the matters referred to in sub-rules 5 (a) – (b) below.

- (4) A livestock agent must in the application to the Council, be candid and accurate and must, of his own accord, disclose all facts and information at his disposal or which may be accessible to him, and which may be relevant for purposes of a decision by the Council.
- (5) The Council must, on receipt of an application by a livestock agent for the issue of a registration certificate, consider the application on the basis of all information disclosed in the application, or otherwise obtained in terms of the Act or these rules, relating to the proposed issue of a registration certificate and of the following criteria and guidelines-
- (a) that the applicant and the persons who are in charge or in control of the applicant-
- (i) are fit and proper persons;
- (ii) have sufficient and appropriate knowledge of the provisions of the Act and the Rules, and particularly of all duties and obligations imposed on the applicant in terms of the Act and the Rules and of duties and obligations to be discharged by the applicant in the enforcement of any rights granted by the Act;
- (iii) will, as regards the relevant business, have adequate resources available to ensure proper compliance monitoring, including as regards the activities of the employees of the livestock agent concerned;
- (iv) will be able to function adequately independently or objectively;
- (v) will be able and enabled to keep a written record of all activities undertaken in the course of the business including, but not limited to, accounting records and relevant financial transactions;
- (vi) will be able to function in a manner ensuring that no actual or potential conflicts of interest arise either internally or externally;
- (vii) will be able to liaise directly with the Registrar; and
- (b) the number of regulatory courses or training attended and regulatory examinations or training passed by the persons referred to in sub-rule (5)(a).

- (6) in the exercise of the approval function, the Council is vested with a discretion and may grant an approval temporarily, provisionally, conditionally or unconditionally and in a particular case notwithstanding that the Council is not satisfied that any particular criterion or guideline is fully met in any such case; provided that the Council shall not grant an approval where non-compliance with rule 23(5)(a) (i), (ii), (v) or (vi) is found.

#### **24 Payment for and maintenance of registration certificates**

- (1) The Council shall not issue a registration certificate to a livestock agent unless the amount referred to in rule 24 (7) has been paid in full to the Council.
- (2) The amount required from a livestock agent by the Council in terms of sub-rule (1) above shall be determined by the Council on an annual basis and shall be paid to the Council simultaneously with the application referred to in rule 23 (1) above.
- (3) Such payment, together with any interest accrued in terms of sub-rule (4) (if applicable), shall reach the Council on or before 30 June first following the date of the relevant notice referred to in sub-rule (1).
- (4) The total outstanding amount owing from time to time in terms of sub-rule (1) shall bear interest at the mora interest rate determined from time to time in terms of the Prescribed Rate of Interest Act, 55 of 1975.
- (5) The Council shall annually not later than 30 April in writing notify each livestock agent and each employee who is the holder of a registration certificate, of the amount determined in terms of section 16(9)(a) of the Act, that is payable for the maintenance of such certificate, which payment is to be made not later than the date determined by the Council.
- (6) The Council may suspend a livestock agent from conducting his business as livestock agent, if-

- (a) that livestock agent has failed to make the payment referred to in sub-rule (2) above;  
or
- (b) on written demand by the Registrar, has failed to-
  - (i) comply with rule 31 (3) below and give satisfactory reasons for the failure to furnish the required report; or
  - (ii) show satisfactory cause for the livestock agent to continue conducting his business as such.
- (7) If the Council orders a suspension as contemplated in sub-rule (6), any interested person may apply in the prescribed manner and form to the Council, to cancel the suspension of the livestock agent; provided however that if such request is made by or on behalf of the livestock agent concerned, the Council shall cancel the suspension of the livestock agent only after the livestock agent has complied with his outstanding obligations in terms of sub-rules (3), (5) and rule 31 (3) below (as the case may be).

## **PART V: RECEIPT AND SALE OF LIVESTOCK**

### **25 Register of livestock received**

- (1) Each livestock agent shall keep a register at his business address in which he shall record the following particulars in respect of all livestock received by him for sale-
  - (a) The date of receipt of the livestock.
  - (b) The name and address of the principal from whom it was received.
  - (c) The number of the delivery note which accompanied it.
  - (d) The kind and gender and description of livestock received.
  - (e) The quantity received.
- (2) The particulars referred to in sub-rule (1) shall –



- (a) be recorded in such register in chronological order of receipt of the livestock concerned; and
- (b) be thus recorded not later than the business day first following the day of receipt of the livestock concerned.
- (3) If a livestock agent uses more than one register simultaneously, he shall notify the Council in writing of the number of registers that are in use.
- (4) Records kept in terms of this rule may be kept in the electronic format approved of by the Council.

## **26 Marking and Reports on unsold livestock**

- (1) A livestock agent shall, on receipt of the livestock for sale mark each animal or other livestock product in such manner that it is identifiable and distinguishable from any other animal or livestock product received for sale.
- (2) A livestock agent shall at all times comply with the provisions of the Stock Theft Act, 1959 (Act No. 57 of 1959) and the Animal Identification Act, 2002 (Act No. 6 of 2002) to the extent that they apply to livestock agents.
- (3) If the livestock is not fully sold within 2 (two) business days after the receipt thereof, the livestock agent concerned shall forthwith inform his principal in writing of the extent and condition of the unsold livestock and a copy of such a report shall be retained for inspection by his principal or by the Council.
- (4) Similar written reports shall thereafter be provided to a principal on a daily basis until all livestock have been sold or otherwise disposed of and copies of such reports shall be retained for inspection by his principal or by the Council.
- (5) A livestock agent or his employee shall on demand provide the Registrar or the Council of copies of the reports referred to in sub-rules (3) and (4).
- (6) A livestock agent shall not be entitled to destroy the reports referred to sub-rules (3) and (4) before the expiry of the period referred to in rule 5(5) above.

**27 Sale of Livestock**

- (1) A livestock agent who sells his principal's livestock by way of an auction, shall comply with the provisions of section 45 of the Consumer Protection Act, 2008 (Act No. 68 of 2008) and the regulations promulgated in terms of that Act, to the extent that they apply to the sale of livestock by auctioneers.

**28 Sales notes**

- (1) A livestock agent shall forthwith after each sales transaction issue a sales note and before the livestock concerned is removed from his custody or from the custody from anyone who held the livestock concerned on his behalf, also issue a removal certificate which complies with the provisions of section 8 of the Stock Theft Act, 1959 (No. 57 of 1959) to the purchaser thereof.
- (2) The following particulars shall be indicated on a sales note-
- (a) A serial number.
  - (b) The name or code mark of the livestock agent concerned.
  - (c) The date of the sale concerned.
  - (d) The name of the principal concerned.
  - (e) In the case of a credit sale, the name and physical and postal address of the purchaser concerned.
  - (f) The kind, gender and description of livestock sold, and the quantity and/or mass so sold.
  - (g) The price at which each such quantity and/or mass was sold.
  - (h) The designation of the premises at which such sale took place.
- (3) The sales note referred to in sub-rule (1) may be produced in electronic form approved of by the Council.

**29 Payments for sales by Buyers**

- (1) Payment made by a buyer to a livestock agent for livestock sold by the livestock agent on behalf of his principal to the buyer shall be made in cash, by way of an electronic funds transfer to the credit of the livestock agent's bank account or by way of a crossed cheque in favour of the livestock agent.
- (2) A cheque or electronic funds transfer as payment for livestock sold that is presented to or made in favour of a livestock agent as payment for livestock sold by him shall be made out in favour of the livestock agent concerned, and if a cheque, be crossed and be endorsed with the expression "not transferable" or "nie oordraagbaar".
- (3) If a cheque does not comply with the requirements set out in sub-rule (1), the livestock agent concerned shall forthwith cross it, and endorse it in the manner provided in sub-rule (1).

**PART VI: ACCOUNTING TO PRINCIPALS****30 Accounting to principals**

- (1) A livestock agent shall not later than 1 (one) business day after having sold livestock on behalf of his principal, issue a statement to his principal on which the following particulars are indicated-
  - (a) A serial number.
  - (b) The name of the livestock agent concerned.
  - (c) The name and address of the principal concerned.
  - (d) The date of sale of the livestock concerned.
  - (e) The number of the delivery note (if any) that accompanied the delivery of the livestock.
  - (f) The kind, gender and description of livestock received, the quantity thereof that has been sold, and the selling price and gross amount realised.

- (g) The number of the relevant sales notes referred to in rule 28, in sequence of the date of issue thereof.
- (h) The amount and nature of each deduction in respect of expenses incurred in connection with the sale and delivery of the livestock concerned or in respect of any other service rendered by the livestock agent to the principal at the written request of the principal.
- (i) The amount, rate or scale at which remuneration was claimed, and the amount of such remuneration.
- (j) Particulars of livestock that have in terms of some or other law been found to be unsuitable to be presented for sale or have for another reason been withdrawn from sale.
- (k) in the event of a sale of livestock having taken place on credit, particulars of the purchaser of such livestock as required by rule 7 above and an indication whether such credit was granted by the livestock agent or by his principal and the extent thereof.
- (2) Copies of the relevant sales notes referred to in rule 28 shall forthwith be made available to the principal at his written request.
- (3) The serial number indicated on a statement in terms of sub-rule (1)(a) shall not later than the business day first following the date of issue of the statement concerned, be recorded in the relevant register referred to in rule 25 opposite the particulars of the livestock concerned.
- (4) If a livestock agent intends to recover any amount other than a deduction referred to in sub-rule (1)(i) from the proceeds of a sale, he shall –
  - (a) be in possession of a written consent from the principal concerned in which such deduction is authorised; and
  - (b) indicate full particulars of such recovery on the relevant statement referred to in sub-rule (1).

- (5) When a livestock agent indicates particulars referred to in sub-rule(1)(j) on a statement, he shall, when requested thereto by his principal or by the Council, provide him with a copy of the order by the appropriate authority that the livestock concerned has in terms of some or other law been found to be unsuitable to be presented for sale.

### **31 Payments to principals**

- (1) Payment made by a livestock agent to his principal for livestock sold by him on behalf of his principal shall be made in cash, by way of an electronic funds transfer to the credit of his principal's bank account or by way of a crossed cheque drawn on his bank account in favour of his principal.
- (2) Unless a livestock agent has sold the livestock of his principal on his principal's credit, he shall make payment to his principal not later than 1 (one) business day after the livestock concerned has been sold, unless his principal agrees, in writing, that payment may be extended to a date which shall not be later than the last business day of the month in which the livestock concerned was sold.
- (3) The amount of such payment shall correspond with the amount due indicated on the relevant statement issued to the principal concerned in terms of rule 30; provided that the amounts due as indicated on two or more such statements may be combined for the purpose of making a single payment, in which case the livestock agent concerned shall also issue a summarised statement to his principal on which the following particulars are indicated-
- (a) the serial numbers of each of the statements referred to in rule 30(1), as well as the net amount due in terms of each such statement;
- (b) the total net amount owing; and
- (c) the number of the cheque or reference of the electronic transfer concerned.
- (4) The date of issue indicated on any cheque drawn or any electronic transfer made to effect payment, shall not be later than the date on which it has to be forwarded to the principal concerned in terms of sub-rule (2).

- (5) A livestock agent shall not be entitled without the prior written approval of his principal, who approved such credit either for a specific buyer, or generally for a category of potential buyers and the specific buyer falls within that category to sell his principal's livestock on the credit of his principal; provided however that such credit shall not be granted for a period longer than 30 (thirty) days after date of the sales transaction concerned and provided further that the livestock agent shall-
- (a) also comply with the provisions of rule 6; and
- (b) make payment in full to his principal, without any right of set-off, on the first business day following the expiry of the 30 (thirty) day period referred to in rule 31(5), unless his principal agrees, in writing, that payment may be extended to a date not later than the last business day of that month. Payment shall be made with full written particulars of the amount received, the identity of the buyer who made payment, the sales transaction to which such payment relates and the amount remaining outstanding after such payment has been made.
- (6) An employee shall not be entitled to sell the livestock of his employer's principal on credit, without the prior written consent of his employer.

## **PART VII: CONTROL AND ADMINISTRATION OF ACCOUNTING ACCOUNTS**

### **32 Addresses at which accounting records are kept**

- (1) Every livestock agent shall keep at his business address entered in the records of the Council, accounting records of-
- (a) all monies received, kept or expended by him;
- (b) all his assets and liabilities;
- (c) all his financial transactions; and
- (d) all livestock received, kept, sold and lawfully destroyed by him;

and shall retain such accounting records for a period of at least three years after the last entry in respect of any transaction made therein, together with the vouchers, receipts and other documents relating to those accounting records.

- (2) Notwithstanding the provisions of sub-rule (1), the Council may at the request of a livestock agent grant written approval that such records may be kept at another address specified in the approval concerned.

### **33 Accounting Records to be audited**

- (1) Every livestock agent shall cause his accounting records to be audited at his expense by an auditor within 4 (four) months after the final date of every financial year of the livestock agent, which final date shall not be amended by him without the prior written approval of the Council.
- (2) Notwithstanding the provisions of Rule 33 (1), the Council may, on good cause shown, at any time order any livestock agent by notice in writing to submit to the Council within a period stated in such notice, but not less than 30 (thirty) business days, an audited statement fully setting out the state of affairs in respect of the matters referred to in Rule 33 (1).
- (3) The accounting records of a livestock agent shall represent fully and accurately in accordance with the financial reporting standards applicable to the business of the livestock agent the state of affairs and business of the livestock agent and explain the transactions completed on behalf of his principal.
- (4) The accounting records shall distinguish in readily discernible form between transactions concluded on his own behalf and transactions concluded on behalf of his principals.
- (5) A livestock agent shall make and keep proper back-ups of his accounting records which shall be kept off site in a locked and fireproof safe, and he shall ensure that his auditors shall, annually, in the report referred to in rule 34(1) below, certify that the livestock agent complied with his duties in this regard.

**34 Auditor's Report**

- (1) A livestock agent shall cause the auditor referred to in rule 33(1), immediately after having completed the audit contemplated in rule 33(1) above, to submit to the Council a report in the form determined by the Council regarding his findings, and a copy thereof to the livestock agent concerned. Such report shall be accompanied by the audited financial statements of the livestock agent concerned.
- (2) If a livestock agent fails or is, in the opinion of the Registrar unlikely to comply with the provisions of rules 33(1) and/or 34(1), the Registrar may designate an auditor to comply with those provisions on behalf of and at the expense of the livestock agent concerned.

**35 Bank Accounts**

- (1) The bank account to be kept and held by a livestock agent other than his employee shall be a cheque account and for that purpose every livestock agent shall-
  - (a) open and keep a bank account at a commercial bank; and
  - (b) unless otherwise agreed, forthwith deposit therein the proceeds of the sale of livestock sold by him on the instructions of or on behalf of his principal.
- (2) A livestock agent shall within 5 (five) business days after a cheque account has been so opened, provide the Council with the particulars of his bank account.
- (3) Any change in connection with a bank account referred to in sub-rule (2) above shall be brought to the attention of the bank concerned and be reported to the Council in writing within 5 (five) business days after such change has been effected.

**36 Deposits in bank accounts, withdrawals and transfers from bank accounts**

- (1) The proceeds of the sale of livestock to be deposited into the bank account of a livestock agent shall be deposited in his cheque account.



- (2) A payment or withdrawal from a bank account shall, in the case of a cheque account, not be made otherwise than by means of an electronic transfer of funds or the issuing of a crossed cheque, which cheque, unless the livestock agent is trading as a sole proprietor, shall be countersigned by at least 2 (two) signatories, and which transfer of funds shall be authorised by at least 2 (two) persons authorised thereto by the livestock agent concerned and shall be made payable to or to the order of a payee specifically designated; provided however that a livestock agent shall be entitled to make cash payments to principals who do not have bank accounts.
- (3) No livestock agent shall withdraw any amount from the account referred to in sub-rule (1) in respect of his remuneration as a livestock agent or for other expenses incurred by him in connection with the sale of livestock unless –
- (a) the proceeds of the sale of the livestock concerned have already been deposited in such account or paid to the principal in cash;
- (b) in the case of such other expenses, they have already been incurred by him; and
- (c) he is in possession of documentary proof to substantiate such withdrawal.
- (d) the remuneration or expense has been correctly debited in his accounting records.

## **PART VIII: MISCELLANEOUS PROVISIONS**

### **37 Certain convictions to be reported to Council**

- (1) Whenever a livestock agent or any of his employees are convicted of an offence involving an element of dishonesty, such livestock agent shall within 5 (five) business days after the date of sentencing, notify the Council by registered post or email of the date of conviction, the nature of the offence, the sentence imposed, and by which court.

- (2) Whenever an employee leaves the employment of the livestock agent who employed him, such livestock agent and such employee shall within 5 (five) business days after the date of termination of employment, notify the Council by registered post or e-mail of the date of termination of employment and the reasons for the termination of his employment.

### **38 Payment of unclaimed moneys to Council**

- (1) If the amount to be paid by a livestock agent to his principal has not been claimed by the principal within 200 (two hundred) days after the sale, that livestock agent shall pay the amount from his bank account to the Council, and furnish the Council with the particulars required in the rules in connection therewith.
- (2) A payment of unclaimed moneys to the Council in terms of sub-rule (1) shall be accompanied by a copy of the relevant sales note referred to in rule 28 (1).
- (3) Payments referred to in sub-rule (2) shall annually be made to the Council during March and September to reach the Council not later than the last business day of each of the said months.
- (4) Whenever a person becomes entitled to receive any money out of the fund kept by the Council for the receipt of unclaimed monies, proof of identity as well as proof of the fact that the person has become entitled to payment must be submitted to the Council, and such person shall comply with the Council's requirements.

### **39 Payment of moneys**

Any amount payable to the Council in terms of the Act or these rules shall be paid by crossed cheque, electronic funds transfer, postal order or money order made out in favor of or for the credit of the Agricultural Produce Agents Council.

**PART IX: GENERAL****40 Address of Council**

The address of the Council shall –

- (a) for the purposes of documents forwarded by post, be Suite Number 69, Private Bag X 9, East Rand 1462;
- (b) for the purposes of documents delivered by hand, Benvista Office Park, Unit 5, Edgar Road, Jansen Park (Boksburg); and
- (c) for purposes of notices and other communications at [admin@apacouncil.co.za](mailto:admin@apacouncil.co.za).

**41 Title of rules**

These rules shall be called the Rules in respect of Livestock Agents, 2017.