

# ***Financial Sector Charter***

**1. Preamble**

1.1 In August 2002, at the NEDLAC Financial Sector Summit, the financial sector committed itself to the development of a Black Economic Empowerment (BEE) charter. We made this commitment noting that:

- despite significant progress since the establishment of a democratic government in 1994, South African society remains characterised by racially based income and social services inequalities. This is not only unjust, but inhibits the country’s ability to achieve its full economic potential;
- BEE is a mechanism aimed at addressing inequalities and mobilising the energy of all South Africans. It will contribute towards sustained economic growth, development and social transformation in South Africa;
- inequalities also manifest themselves in the country’s financial sector. A positive and proactive response from the sector through the implementation of BEE will further unlock the sector’s potential, promote its global competitiveness, and enhance its world class status;
- equally, the financial stability and soundness of the financial sector and its capacity to facilitate domestic and international commerce is central to the successful implementation of BEE.

1.2 We, the parties to this charter, therefore commit ourselves to actively promoting a transformed, vibrant, and globally competitive financial sector that reflects the demographics of South Africa, and contributes to the establishment of an equitable society by effectively providing accessible financial services to black people and by directing investment into targeted sectors of the economy.

1.3 This financial sector charter

- was voluntarily developed by the sector;
- is a Transformation Charter as contemplated in the Broad-Based BEE legislation;
- constitutes a framework and establishes the principles upon which BEE will be implemented in the financial sector;
- represents a partnership programme as outlined in Government’s Strategy for Broad-Based BEE;
- provides the basis for the sector’s engagement with other stakeholders including Government and labour;
- establishes targets and unquantified responsibilities in respect of each principle; and
- outlines processes for implementing the charter and mechanisms to monitor and report on progress.

**2. Interpretation**

2.1 Affected institution means every financial institution that takes designated investments.

2.2 Agreed standard valuation means a valuation of an asset (valued in terms of the context in which this term appears) based on normal valuation methodologies (representing standard market practice) given the nature and stage of development of the asset being valued provided that:

- the principles set out in the table hereunder will serve only as a guide to possible valuation methodologies that could be employed:

| <b>Operation</b> | <b>Valuation methodologies</b>   |
|------------------|--|
| Banking          | Discounted cash flow<br>Price to book<br>Capitalisation of earnings<br>Net asset value                             |
| Insurance        | Discounted cash flow<br>Embedded value<br>Price-to-embedded value<br>Capitalisation of earnings<br>Net asset value |

|  |   |
|--|---|
| Brokerage firms                                | Discounted cash flow<br>Capitalisation of earnings<br>Net asset value   |
| Asset managers & Collective Investment Schemes | Discounted cash flow<br>Capitalisation of earnings<br>Percentage of funds under management<br>Net asset value |

- where the financial institution is listed on the JSE Securities Exchange South Africa the market capitalisation of the financial institution concerned shall serve as an overall benchmark for the individual valuations of the underlying assets and businesses of such financial institution such that, on a sum-of-the-parts basis, these would represent a value no higher than such market capitalisation.
  - Cash flows to a beneficiary or shareholder will be valued on an after -tax basis.
- 2.3 BEE, as defined in the Broad-Based Black Economic Empowerment legislation, means the economic empowerment of all black people, including women, workers, youth, people with disabilities and people living in rural areas, through diverse but integrated socio-economic strategies.
- 2.4 BEE accredited means being validated in terms of this charter as a BEE company, or being validated as having achieved a certain standard of BEE contribution in terms of a recognised BEE charter scorecard or accreditation system.
- 2.5 BEE transactions means:
- all transactions for the acquisition, by black people, of direct ownership in an existing or new entity (other than an SME) in the financial or any other sector of the economy; and
  - joint ventures with, debt financing of or other form of credit extension to, and equity investments in BEE companies (other than SMEs).
- 2.6 BEE companies refers to companies as defined in paragraphs 2.7, 2.8, 2.9, and 2.12.
- 2.7 Black companies mean companies that are more than 50% owned and are controlled by black people.
- 2.8 Black empowered companies mean companies that are more than 25% owned by black people and where substantial participation in control is vested in black people.
- 2.9 Black influenced companies mean companies that are between 5% and 25% owned by black people and with participation in control by black people.
- 2.10 Black people means all Africans, Coloureds and Indians who are South African citizens and includes black companies. However, in paragraphs 5 and 11 the term shall include permanent residents of the Republic of South Africa. The word "black" when used in conjunction with other words shall have the same implications.
- 2.11 Black SME means a small or medium enterprise (with a turnover ranging from R500,000 per annum to R20 million per annum) which is a black company or a black empowered company.
- 2.12 Black women-empowered enterprise means companies that are more than 30% owned by black women, and where substantial participation in control is vested in black women.
- 2.13 Broad-based ownership is where an empowerment shareholder represents a broad base of members such as employees (to the extent that the options have actually been exercised), collectives and/or communities, or where the benefits support a target group, for example black women, people living with disabilities and the youth. Shares are held directly or indirectly through non-profit organisations and trusts. At the same time, directors and management of the groups should predominantly comprise black people.
- 2.14 Charter Council means the Charter Council established in terms of paragraph 15.1.
- 2.15 Company means an enterprise registered in terms of the Companies Act, 1973, close corporations, trusts and any other such enterprise formed for business purposes.
- 2.16 Control centres on the authority and power to manage assets, the determination of policies and the direction of business operations. Indicators of control may include:
- participation in control structures of a business unit or of the company (such as shareholder meetings, the Board of directors, board subcommittees, and divisional boards), the exercise of voting rights on the board of directors and committees thereof, and controlling equity;

- participation in executive management.
- 2.17 Discrimination: means discrimination as defined in the Promotion of Equality and Prevention of Unfair Discrimination Act.
- 2.18 Designated investment means any form of statutory or voluntary deposit, saving, investment or risk insurance placed or made by the South African public (whether of a wholesale or retail nature, but not by one financial institution in another).
- 2.19 Development Finance Institutions or “DFI’s” means finance entities created or funded by a tier of Government. These include, but are not limited to, the DBSA, IDC, PostBank, NEF, Land Bank, Khula, NHFC, the PIC, the Umsobomvu Fund, and Provincial Development Corporations.
- 2.20 Direct ownership means ownership of an equity interest together with control over all of the voting rights attaching to that equity interest.
- 2.21 Empowerment financing means the provision of finance for or investment in:
  - Targeted investment; and
  - BEE transactions.
- 2.22 Effective access means
  - 2.22.1 being within a distance of 20 Kms to the nearest service point at which first-order retail financial services can be undertaken, and includes ATM and other origination points, except in the case of the products and services of the long term assurance industry, where effective access, including physical access will be in terms of the availability of these products and services, and in terms of proximity or accessibility of financial advisers to community-based infrastructure;
  - 2.22.2 being within a distance of 20 Kms to the nearest accessible device at which an electronic (other than ATM) service can be undertaken;
  - 2.22.3 a sufficiently wide range of first-order retail financial products and services to meet first order market needs and which are aimed at and are appropriate for individuals who fall into the All Media Product Survey (AMPS) categories of LSM 1-5;
  - 2.22.4 non-discriminatory practices;
  - 2.22.5 appropriate and affordably priced products and services for effective take up by LSM 1-5; and
  - 2.22.6 structuring and describing financial products and services in a simple and easy to understand manner.
- 2.23 Enterprise development means support for existing, or the fostering of, new black SMEs and BEE companies in the financial and other sectors of the economy.
- 2.24 Executive management means X number of people identified by the Board of Directors by name and position as the top managers of that financial institution, where X = 0.4% of the total staff of the financial institution employed in South Africa, with a minimum of 9 people and a maximum of 50.
- 2.25 Financial sector means all the classes of financial institution defined in paragraph 2.26.
- 2.26 Financial institutions means banks, long-term insurers, short-term insurers, re-insurers, managers of formal collective investment schemes in securities, investment managers and other entities that manage funds on behalf of the public, including retirement funds and members of any exchange licensed to trade equities or financial instruments in this country and entities listed as part of the financial index of a licensed exchange. Any other institution in the financial sector, including licensed exchanges, may opt in.
- 2.27 First-order retail products and services means
  - 2.27.1 transaction products and services, being a first order basic and secure means of accessing and transferring cash for day-to-day purposes;
  - 2.27.2 savings products and services, being a first order basic and secure means of accumulating funds over time. (e.g. savings accounts, contractual savings products such as endowment policies, collective investments and community-based savings schemes);
  - 2.27.3 credit for low-income housing (as defined in paragraph 2.34.3, but with a minimum income of R500 per month), financing agricultural development, or establishing, financing or expanding a black SME (as defined in paragraph 2.11, but with no minimum turnover);
  - 2.27.4 insurance products and services being the mitigation of impact of defined first order basic risks. (e.g. life insurance, funeral insurance, burial society, household insurance and health insurance).
- 2.28 Global policy means a globally and uniformly applied restriction, regulation, or directive imposed on a foreign owned financial institution by the parent company or on any financial institution by a regulator which governs that financial institution.

- 2.29 Indirect ownership occurs where an institution or other investor owns equity in a company on behalf of beneficiaries and there may not be direct participation by the beneficiaries in the voting rights.
- 2.30 Management
- 2.30.1 Management is divided into senior, middle and junior levels, and
- Senior management means all employees with a package (excluding bonuses) in respect of which the cost to the employer is R450,000 per annum or more, but excludes all employees who fall within the definition of executive management;
  - Middle management means all employees with a package (excluding bonuses) in respect of which the cost to the employer is between R250,000 and R450,000 per annum;
  - Junior management means all employees with a package (excluding bonuses) in respect of which the cost to the employer is between R150,000 and R250,000 per annum.
- 2.30.2 If the bonus is in excess of 50% of total remuneration then 50% of the bonus will be included as part of the package.
- 2.30.3 The salary bands will be increased in line with the consumer price index (“CPIX”) on the 1<sup>st</sup> of January each year commencing on 1<sup>st</sup> January 2004.
- 2.31 Procurement means all expenditure to acquire goods and or services including capital expenditure, but excluding
- broker commissions;
  - reinsurance premiums;
  - commissions paid to insurance intermediaries;
  - property and rental purchases (although property management is specifically included);
  - expenditure classes covered elsewhere in the charter e.g. salaries and wages. (Contract staff are regarded for this purpose as own staff and are excluded);
  - procurement spending where there is a natural monopoly;
  - any items of procurement where the supplier is imposed in terms of a global policy for technical (but specifically not commercial) reasons;
  - inter-entity charges for services rendered by other members of the group;
  - social investment expenditure and donations; and
  - all V.A.T payable.
- 2.32 Regulation or regulate when used in this charter shall have a common law or economic meaning depending on the context in which it is used.
- 2.33 Sound business practice means business practice which is conducive to the establishment, maintenance and promotion of:
- domestic and international confidence in the financial sector;
  - best international practice and prudential and other regulations relating to the custody and investment of the nation’s savings and the acceptance of risk;
  - the right to underwrite in both the long and short-term insurance industries;
  - sustainable sources of finance, which take cognisance of the different resources available;
  - level playing fields and competition between the different sub-sectors of the financial sector, and hence the avoidance of arbitrage between the sub-sectors; and
  - BEE transactions taking place on a willing buyer and a willing seller basis.
- 2.34 Targeted Investment means debt financing of, or other form of credit extension to, or equity investment in South African projects in areas where gaps or backlogs in economic development and job creation have not been adequately addressed by financial institutions. It specifically means financing of or investment in:
- 2.34.1 transformational infrastructure projects that support economic development in underdeveloped areas and contribute towards equitable access to economic resources. Such infrastructure projects could be in the following sectors-
- transport;
  - telecommunications;
  - water, waste water and solid waste;
  - energy;
  - social infrastructure such as health, education, and correctional services facilities; and
  - municipal infrastructure and services.
- 2.34.2 agricultural development involving integrated support for resource-poor farmers, through enabling access to and the sustainable use of resources.

- 2.34.3 low-income housing for households with a stable income in excess of R1,500 per month and less than R7,500 per month. This income band will be increased in line with the CPIX on the 1st of January each year commencing on 1 January 2004.
- 2.34.4 Black SMEs.
- 2.35 All references to a year mean 31 December of that year (e.g. 2008 means 31 December 2008).

### 3. **The challenges facing the financial sector**

- 3.1 In most economies the financial sector plays a central role in enhancing growth and development. The South African financial sector is generally recognised as world class in terms of its skilled workforce, adequate capital resources, infrastructure and technology, as well as a conducive operating, regulatory and supervisory environment. However, the financial sector is confronted by a number of challenges which include the fact that:
- it is characterised by the presence of a few very large institutions. Many of the smaller and foreign institutions have exited the market in recent years;
  - there are low levels of black participation, especially of black women, in meaningful ownership, control, management and high-level skilled positions in the sector;
  - there has been an inadequate response by the sector to the increasing demand for access to financial services;
  - the sector has not effectively provided credit to entrepreneurs, particularly black businesses;
  - the national level of savings and investment is inadequate to support sustained economic growth and individual financial security;
  - there is insufficient investment of the savings pool under the control of the sector into targeted investments of national priority;
  - a large pool of funds circulates outside the formal financial system, including but not limited to funds held by stokvels, informal traders and in other forms of short-term savings;
  - there has been limited support for new black firms in the financial sector by Government and the private sector; and
  - they need to find meaningful ways to support the Proudly South African Campaign.
- 3.2 By addressing the abovementioned challenges, the financial sector will make a significant contribution towards economic growth, development, empowerment and reduction of inequalities and poverty in our society. The initiatives envisaged will also promote growth in the financial sector.
- 3.3 The growth and development of the financial sector is central to the successful implementation of BEE and is an overriding principle and objective of this charter. In order to enhance the financial sector's global competitiveness and to address BEE, the following imperatives must be satisfied:
- the long term financial stability and soundness of the sector and its capacity to finance economic growth and to facilitate domestic and international commerce must be maintained;
  - the sector's ability to provide appropriate and effective access to financial services for a greater segment of the population must be substantially enhanced;
  - a savings culture must be developed in South African society;
  - the pool of intellectual capital in the sector must be improved by focusing on attracting new entrants and continually investing in the skills development and training of existing and new black professionals and managers;
  - the development of black strategic and operational leadership must be fostered within the sector;
  - diverse organisational cultures must be promoted to cater for a wide range of customers and to reflect the principles of inclusivity;
  - the financial sector must promote triple bottom line accountability, including principles of good corporate governance;
  - the representation of black women and black people living with disabilities in the sector as employees, managers, suppliers and owners of equity must be increased;
  - champions who understand and are committed to transformation are required at the highest level within each organisation ;
  - the number and quality of black firms providing services and products to the financial services industry must be increased and competition amongst domestic firms improved;
  - entrepreneurial development must be promoted and enhanced by supporting black entrepreneurs;

- the financial sector, which controls significant pools of savings, must be cognisant of the impact it has on directing savings towards targeted investments of national priority; and
- the regulatory environment and architecture of the sector must promote the empowerment objectives of this charter, lower the barriers to entry and facilitate competition.

#### 4. **Application of the financial sector charter**

- 4.1 This charter applies to the South African operations of the financial sector.
- 4.2 The targets in this charter will be applied from 1 January 2004 (the “effective date”) until 31 December 2014.
- 4.3 In 2009 (based on the reports for the year ended 31 December 2008), the Charter Council will undertake a comprehensive mid-term review and make decisions regarding the implementation of the charter in its second term. The ownership provisions will be reviewed in 2011 to address identified shortcomings. The ownership provisions will be reviewed by the Charter Council in 2011 to decide what further steps (if any) to address identified shortcomings should be taken at individual financial institution, sub sector, sector or national levels.
- 4.4 The parties to this charter agree that the principles contained in the charter will be relevant beyond 2015. In 2015 (based on the reports for the year ended 31 December 2014) the Charter Council will undertake a second comprehensive review of progress in terms of the charter, and draw conclusions as to the impact of the charter on the sector and the economy, and make decisions as to what further steps (if any) to address identified shortcomings should be taken at individual financial institution, sub sector, sector or national levels.
- 4.5 All the provisions of the charter are to be achieved in a manner consistent with sound business practice.
- 4.6 Certain of the provisions of the charter will not apply in the same manner to all financial institutions. The following qualifications are provided for:
- 4.6.1 *Exemption from the Human Resource Development provisions*  
If the financial institution has less than 50 staff members, it will be exempt from the provisions of paragraphs 5, 11.3 and 11.4 of the charter unless it opts to be so bound. But it will nevertheless remain bound by all labour legislation (and specifically the provisions of the Employment Equity, Labour Relations and Skills Development Acts).
- 4.6.2 *Exemption from the Empowerment Financing provisions*  
If the financial institution has less than R10 m of designated investments it will be exempt from the provisions of paragraph 9 of the charter unless it opts to be so bound.
- 4.6.3 *Exemption from all the provisions*  
If the financial institution has less than 50 staff members and less than R10 m of designated investments, it will be exempt from all the provisions of the charter unless it opts to be so bound.
- 4.6.4 *Qualifications if there is a global policy to which the financial institution is subject*  
If, in terms of a global policy to which a financial institution is subject, –
- any board members, executive or senior managers are imposed on the local operation, those personnel will not be taken into account for the purposes of calculating ratios in terms of paragraphs 5 or 11 of the charter;
  - it is precluded from accommodating local ownership participation, it will be exempt from the ownership provisions of paragraph 10 of the charter.
- 4.6.5 *Exemption from the Access provisions*
- If the financial institution is a wholesaler, in the sense that it is not a provider of first-order financial products and services, it will be exempt from the provisions of paragraph 8 of the charter unless it opts to be so bound.
  - If the financial institution is a retailer of first-order financial products and services but, on grounds presented to and accepted by the Charter Council, it would be inconsistent with its business model for it to extend those products or services to low-income communities, it will only be responsible for the consumer education component of access (paragraph 8.4), and the points will be adjusted accordingly.
- 4.6.6 *Qualifications in respect of retirement funds*  
If a retirement fund has less than 50 staff members, it will be exempt from all the provisions of the charter other than paragraphs 9 and 12.

If a retirement fund has more than 50 staff members, it will be exempt from all the provisions of the charter other than paragraphs 5, 11.3 and 11.4, and paragraphs 9 and 12.

- 4.7 All financial institutions claiming exemptions in terms of this paragraph must submit a return to the Charter Council providing motivation and evidence supporting the exemption.
- 4.8 The participation of DFIs in certain aspects of the charter is required in order to give full effect to the intent of the charter.
- 4.9 If a financial institution is a member of a group, it will be measured and reported on as part of the South African group unless –
- the financial institution is a listed company; or
  - the financial institution opts in.
- 4.10 Notwithstanding the provisions of paragraph 4.9 above, the boards of directors of all financial institutions will ensure that transformation plans are rolled out through all the divisions and subsidiaries of the group, and that measurement mechanisms are put in place, responsibility given and performance evaluated at all levels and in all areas.
- 4.11 The parties to this charter agree that the public and private sectors, when sourcing products and services from the financial sector, should apply the charter and its scorecard. Accordingly –
- 4.11.1 the financial institutions specifically agree that, when competing for business, they will use their charter rating to explain their BEE contribution;
- 4.11.2 in adjudicating tenders for the provision of financial services, all tiers of Government will base their adjudication of BEE contribution on the charter rating which has been accorded in terms of this charter; and
- 4.11.3 the parties to this charter agree that the private sector should base its evaluation of the BEE contribution of members of the financial sector on the charter rating which has been accorded in terms of this charter.

## 5. **Human resource development**

- 5.1 Disparities in the South African workplace resulting from past discriminatory practices and laws are not only unjust, but also have direct negative implications for economic efficiency, competitiveness and productivity. It is therefore in the country's long-term national interests that a broad-based and diverse pool of skills is developed for the sector to unleash the potential of all South Africans.
- 5.2 Consequently, each financial institution undertakes to:
- 5.2.1 promote a non-racial, non-sexist environment and to enhance cultural diversity and gender sensitivity within the sector;
- 5.2.2 invest in human resource development across the full spectrum of skills, with special emphasis on increasing the participation of black people in skilled, strategic and operational leadership in the sector;
- 5.2.3 invest in and equip current and future leadership incumbents in the sector with the appropriate knowledge and capacity to enable them to play a central role in driving the transformation programme.
- 5.3 In addition to the obligations of the financial sector in terms of Employment Equity and Skills Development legislation, and-
- 5.3.1 based on an estimated ratio of 10% for 2002, each financial institution will have a minimum target of 20% to 25% black people at senior management level by 2008;
- 5.3.2 based on an estimated ratio of 1.6% for 2002, each financial institution will have a target of a minimum of 4% black women at senior management level by 2008;
- 5.3.3 based on an estimated ratio of 17% for 2002, each financial institution will have a target of a minimum of 30% black people at middle management level by 2008;
- 5.3.4 based on an estimated ratio of 5% for 2002, each financial institution will have a target of a minimum of 10% black women at middle management level by 2008;
- 5.3.5 based on an estimated ratio of 28% for 2002, each financial institution will have a minimum target of 40% to 50% black people at junior management level by 2008;
- 5.3.6 based on an estimated ratio of 12% for 2002, each financial institution will have a target of a minimum of 15% black women at junior management level by 2008.
- 5.4 In recognition of the low starting points and targets, and the need for higher levels of black women representation at all three levels and at executive level, a 2014 target of 33% of the relevant total black representation target has been set for black women representation at all four levels. The financial sector commits, before 2008 and through a mechanism established by the Charter Council,

to establish the other 2014 targets for all management levels and at executive level (dealt with in paragraphs 11.3 and 11.4).

- 5.5 Over and above any skills levies payable by a financial institution, each financial institution will, from the effective date of the charter to 2008, spend 1.5% of total basic payroll per annum on training of black employees.
- 5.6 This skills development initiative shall be directed at skills programmes that promote black skills in the sector in line with a skills audit for each sub-sector. These skills audits may be undertaken by the financial institution, the sub-sectors or by the respective SETAs and the programmes shall be formalised and commenced by 1 July 2005.
- 5.7 The financial sector undertakes to implement a Learnership Programme in terms of which, over one learning cycle of three intakes, each financial institution will employ up to 4.5% of its total staff in the form of black matriculants, or the NQF Level Four equivalent, in registered learnerships. Direct spending in excess of that recovered from the SETAs or Government will form part of the skills development targets in 5.5. The sector commits to review its matriculant learnership programme after the first cycle in consultation with the department of labour, with a view to implementing a second cycle. This commitment is subject to satisfactory resolution of the principles and funding of matriculant learnerships with Government and the relevant SETAs.
- 5.8 Each financial institution undertakes to develop and report on the following programmes:
  - 5.8.1 career pathing through the provision of the necessary support to black people at all levels to facilitate progress in their agreed careers;
  - 5.8.2 the implementation of appropriate mentorship programmes within companies in the sector to assist in the rapid development of black professionals;
  - 5.8.3 targeted recruitment to expand the base of potential recruits;
  - 5.8.4 cultural diversity and gender sensitivity programmes at various levels of management in the financial institution, with the intention of promoting a vibrant, enabling and diverse institutional culture; and
  - 5.8.5 where possible, in conjunction with institutions of higher learning, introduce training programmes in line with the NQF requirements and establish undergraduate and post graduate diplomas and degrees in financial services.

## 6. Procurement Policies

- 6.1 Financial institutions will implement a targeted procurement strategy to enhance BEE. Provided there are charters in the information and communications technology ("ICT"), the advertising and the automotive and building sectors, and that international suppliers are subject to those charters, the target will be 50% of the value of all procurement from BEE accredited companies by 2008 and 70% by 2014.
- 6.2 A minimum of two thirds of that expenditure must be spent with BEE accredited companies as the primary vendor. The residual one third may be channelled to BEE accredited companies via a primary vendor, which is not a BEE accredited company, with only the BEE portion of the expenditure counting towards the target. Where a supplier is a BEE accredited company, which also sources from other BEE accredited companies, only the expenditure at the first tier will count towards the target.
- 6.3 Financial institutions will:
  - 6.3.1 provide support to black SMEs to enable them to benefit from targeted procurement programmes. Such support will include programmes designed to assist black SMEs in tendering for financial sector business, setting aside areas of procurement reserved or preferred for black SMEs only;
  - 6.3.2 promote early payment for services provided by SME's;
  - 6.3.3 encourage existing suppliers to address BEE and become BEE accredited;
  - 6.3.4 report on all spend as per the categories that fall within the definition of BEE accredited; and
  - 6.3.5 explore meaningful ways of supporting the Proudly South African Campaign.
- 6.4 The Charter Council will review the 2008 and 2014 targets in 2005, to assess the status of charters in other sectors, and to assess the impact of 6.1 on procurement of services from black-owned SME'S. The Charter Council will specifically review the targets for claims procurement in the short-term insurance sub-sector in 2005.

**7. Enterprise development**

- 7.1 The financial sector commits itself to fostering new, and developing existing BEE accredited companies through the following initiatives:
- 7.1.1 improving the levels of assistance provided to BEE accredited companies in the financial sector and other sectors of the economy through skills transfer, secondment of staff, infrastructure support, and giving technical and administrative support and assistance. Measurable financial support given in this connection will be scored under procurement;
- 7.1.2 supporting the establishment and growth of BEE accredited companies as broking agencies and/or enterprises in the financial sector through which the sector sells its products and services. Measurable financial support given in this connection will be scored under procurement; and
- 7.1.3 joint ventures with, debt financing of, and equity investments in BEE companies, in the financial sector and other sectors of the economy. Measurable financial support given in this connection for a Black SME may be scored under Targeted Investments, or, for a BEE company, it may be scored under BEE transactions financing, measured on the basis of Rand spend.
- 7.2 The financial sector will ensure that where appropriate, it refers business opportunities to, and procures financial services from, black owned financial institutions.
- 7.3 The financial sector's support for the development of second and third tier financial institutions may take, but shall not be limited to taking, the form of measures set out in paragraphs 7.1.1 and 7.2

**8. Access to financial services**

- 8.1 The financial sector acknowledges that access to first-order retail financial services is fundamental to BEE and to the development of the economy as a whole.
- 8.2 In terms of the Declaration of the Financial Sector Summit on 20<sup>th</sup> August 2002, it was agreed that strategies would be put in place to ensure that the financial sector is more efficient in the delivery of financial services, which enhance the accumulation of savings and direct them to development initiatives. Insofar as it relates to access to financial services, specific actions were agreed in relation to:
- ensuring the provision of first-order retail financial services including:
    - sustainable and affordable banking services;
    - contractual savings schemes; and
    - credit for small and micro enterprise and poor households.
  - the development of sustainable institutions to serve poor communities;
  - the regulation of Credit Bureaux;
  - discrimination;
  - HIV/AIDS; and
  - supporting higher levels of savings and investment overall.
- 8.3 In respect of this charter, the financial sector commits itself to substantially increase effective access to first-order retail financial services to a greater segment of the population, within LSM 1-5. The financial sector specifically undertakes:
- 8.3.1 by 2008 to make available appropriate first-order retail financial services, affordably priced and through appropriate and accessible physical and electronic infrastructure such that:
- 80% of LSM 1-5 have effective access to transaction products and services (defined in paragraph 2.27.1);
  - 80% of LSM 1-5 have effective access to bank savings products and services (defined in paragraph 2.27.2);
  - a percentage (to be settled with the life assurance industry) of LSM 1-5 households have effective access to life assurance industry products and services (defined in paragraphs 2.27.2 and 2.27.4);
  - 1% of LSM 1-5 plus 250,000 have effective access to formal collective investment savings products and services (defined in paragraph 2.27.2); and
  - 6% of LSM 1-5 have effective access to short term risk insurance products and services (defined in paragraph 2.27.4).
- 8.3.2 in accordance with the arrangements concluded with Government and the DFIs in terms of paragraph 9.1.3, to originate the low-income housing loans, agricultural development loans, and loans to black SMEs, necessary to achieve the desired breakdown of targeted investment

established in terms of paragraph 9.1.3. For the purposes of determining the value of loans originated in terms of this paragraph, any loan which falls within the definition of a first-order retail financial service or product as set out in paragraph 2.27.3 will be taken into account.

- 8.3.3 Each sub-sector will determine, in consultation with the Charter Council how the sub-sector targets will be divided between the individual financial institutions in the sub-sector.
- 8.4 Each financial institution commits, from the effective date of the charter to 2008, to annually invest a minimum of 0.2% of post tax operating profits in consumer education. Consumer education will include programmes that are aimed at empowering consumers with knowledge to enable them to make more informed decisions about their finances and lifestyles
- 8.5 The financial sector furthermore commits to:
- the elimination of discrimination in the provision of financial services;
  - supporting the establishment of third tier community based financial organisations or alternative financial institutions.
- 8.6 By 2005, the financial sector, together with Government, undertakes to establish standards to monitor access and to design a mechanism for the ongoing evaluation and review of the impact of its initiatives on access.

## 9. **Empowerment financing**

### 9.1 Resourcing

- 9.1.1 All the parties to the charter commit themselves to working in partnership with Government and its DFIs to mobilise resources for empowerment financing.
- 9.1.2 Based on preliminary calculations, it is estimated that the aggregate amount of new empowerment financing from the financial sector could exceed R75bn. All parties agree to working together to meet the objective of increasing the total amount of empowerment financing.
- 9.1.3 As part of the process, the parties will, by no later than 30 June 2004, establish:
- 9.1.3.1 the total amount of empowerment financing;
  - 9.1.3.2 the desired breakdown between BEE transaction financing and the four components of targeted investment;
  - 9.1.3.3 appropriate risk mitigating measures and risk sharing arrangements between Government and its DFIs on the one hand and the private sector on the other;
  - 9.1.3.4 the period over which the empowerment financing will be done;
  - 9.1.3.5 the institutional framework and financing models for the mobilisation of the various resources; and
  - 9.1.3.6 the extent to which and how past empowerment financing transactions will be taken into account in terms of paragraph 9.1.6.
- 9.1.4 Investment in transformational infrastructure will, in part, depend on the establishment of a mechanism to identify and analyse potential projects (including appropriate skills and post funding care).
- 9.1.5 The total amounts to be invested in BEE transaction financing and targeted investments in terms of 9.1.3.2 will be calculated as percentages of the total designated investments in the financial sector as at 31 December 2003, and currently estimated to be of the order of R2,000 bn. Those percentages of designated investments in each affected financial institution will constitute the targets for BEE transaction financing and targeted investment respectively.
- 9.1.6 Without reducing the total amount for new empowerment financing by the sector, the targets of individual affected institutions might be adjusted to take account of empowerment financing which they have on their books on the effective date of the charter.
- 9.1.7 Different affected institutions within the sector may choose to participate to a greater or lesser extent in each of the components of targeted investment, depending on where they are relatively better positioned to do so.
- 9.1.8 For the purposes of calculating the targeted investment made by an affected institution:
- investments and financing made by the affected institution, and held on its own balance sheet, or any securitised financing or investments in or financing to institutions which themselves hold targeted investments or financing, will be taken into account; and
  - any financing and investment which falls within the definition of a first-order retail financial service or product as set out in paragraph 2.27.3 will be taken into account.

- 9.1.9 Each affected institution shall annually report its investment into each of the four targeted investment areas so that the aggregate can be monitored and actions taken to ensure that the desired results are achieved.
- 9.1.10 The Charter Council will review the financial sector's impact on the four classes of targeted investments at the end of the period determined in terms of paragraph 9.1.3.4.
- 9.1.11 Pension fund trustees, fund managers and consultants play a critical role in influencing the flow of funds. Initiatives will therefore be developed to enhance their understanding of investments in general and specifically their participation in targeted investments and BEE transaction financing and to make a material contribution to shareholder activism as contemplated in paragraph 12.
- 9.2 Principles of BEE transactions
- 9.2.1 BEE ownership initiatives should be aimed at promoting the productive and sustainable participation of black companies and black people in each sector of the economy;
- 9.2.2 Ownership will be particularly encouraged if it adds value to the companies involved and includes meaningful participation in management and control;
- 9.2.3 The funding structures should facilitate the transfer of full economic interest to the BEE partner and longer-term shareholder-type relationships, as opposed to short-term portfolio investments (especially where the transaction has been facilitated);
- 9.2.4 If the acquisition of equity by the BEE company is facilitated in terms of the provisions of this charter or Government assistance, the retention of the shareholding as a BEE share should be promoted to the greatest extent possible;
- 9.2.5 Initiatives aimed at achieving broad-based empowerment will be promoted. This would include employee ownership, community and collective ownership; and
- 9.2.6 Joint ventures or partnership arrangements should be meaningfully structured with equitable portions of the responsibility and benefit to each party.
10. **Ownership in the financial sector**
- 10.1 Each financial institution will have a target of a minimum of 25% black ownership, measured at holding company level, by 2010.
- 10.2 A minimum of 10% of the target set in terms of paragraph 10.1 must be satisfied by way of direct ownership by black people, provided further that the financial institution complies with the provisions of paragraph 11.1 concerning the appointment of black directors.
- Should the balance or any part of the balance of 15% be achieved by way of direct ownership a maximum of four bonus points will be awarded.
- 10.3 Direct ownership as contemplated in 10.2 should where possible meet the principles outlined in paragraph 9.2 and may include:
- 10.3.1 direct ownership in the financial institution as a result of BEE transaction financing;
- 10.3.2 broad-based ownership;
- 10.3.3 disposal of any assets, operations, businesses or subsidiaries by the financial institution as a going concern to black people;
- 10.3.4 direct shareholding or ownership with control, commensurate with the level of ownership concerned, at subsidiary or divisional level; or
- 10.3.5 joint venture or partnership arrangements.
- 10.4 Any transaction which involves BEE parties acquiring equity on a conditional, deferred basis, with no issue of equity carrying upfront economic interest, shall, for the avoidance of doubt, not fall to be counted as direct ownership for the purposes of paragraph 10.3 until such time as the equity is actually transferred.
- 10.5 A maximum of 15% of the target set in terms of paragraph 10.1 may be satisfied by way of indirect ownership by black people at group or subsidiary level. Financial institutions may only score indirect ownership points if they have reached a level of 10% direct ownership, and if they have taken active measures to meet the responsibilities outlined in section 12 of this charter. Indirect ownership will be measured on a basis to be agreed and approved by the Charter Council.
- 10.6 For the purposes of this charter, black ownership will be calculated as the agreed standard valuation of the black interests referred to in paragraph 10.3 expressed as a percentage of the agreed standard valuation of the South African operations of the financial institution on the date of the transaction. Where a BEE transaction results in black people acquiring 100% of an asset, operation, business or subsidiary from a financial institution the agreed standard valuation of that asset shall be deemed to be the transaction consideration applicable to the BEE transaction concerned, and the

above-mentioned percentage shall be calculated based on the agreed standard valuation (as defined) of the South African operations on the date of the transaction.

- 10.7 Only historical direct ownership transactions, which remain wholly or partially current on the effective date, can be included in the calculations of direct ownership. After the effective date, all direct ownership transactions can be included in the calculation of direct ownership, even if they unwind, provided they meet the principles of BEE transactions as provided in paragraph 9.2.
- 10.8 Any direct ownership transaction, which unwinds, must be referred to the Charter Council for analysis as to whether, when it was originally concluded, the transaction genuinely complied with the intent of paragraph 9.2. If the Charter Council decides that it was not, it may not be taken into account in calculating direct ownership.
- 10.9 If a financial institution is at least 25% owned by another financial institution, it may, in the calculation of direct black ownership, take into account a portion of the direct black ownership in that other company based on the percentage shareholding of that other company in the financial institution concerned.
- 10.10 Due to their unique nature, foreign banking groups with a branch structure will have the same target as is set out in paragraph 10.1, but will be permitted to address that target either -
  - 10.10.1 by transactions contemplated in paragraphs 10.2 and 10.3 of this charter; or
  - 10.10.2 by financing identified BEE transactions in addition to the investment contemplated in paragraph 9.1.5. Points and bonus points for such financing will be scored in the same way as if the financing (calculated as a percentage of the agreed standard valuation of the South African operations of the foreign banking group) equated the same percentage of direct ownership in terms of paragraph 10.2. At least 25% of this financing must be committed to BEE transactions in the financial sector.
  - 10.10.3 Not more than 18 points may be earned in aggregate in terms of 10.10.1 and 10.10.2. BEE transactions identified in terms of 10.10.2 will, for the purposes of this charter, be treated as if they were ownership transactions, and shall be governed by all the provisions of paragraph 10, and shall not be measured or treated interchangeably with BEE transactions in paragraph 9.1.5.

## 11. **Control in the financial sector**

- 11.1 Each financial institution will have a target of 33% black people on the board of directors by 2008;
- 11.2 Each financial institution will have a target of a minimum of 11% black women on the board of directors by 2008.
- 11.3 Based on an estimated ratio of 15% for 2002, each financial institution will have a target of a minimum of 25% black people at executive level by 2008;
- 11.4 Based on an estimated ratio of 2% for 2002, each financial institution will have a target of a minimum of 4% black women at executive level by 2008.

## 12. **Shareholder activism**

- 12.1 The financial sector recognises that shareholder activism is a critical component of continued confidence and long-term growth of the sector.
- 12.2 Financial institutions therefore undertake within the parameters of good corporate governance to:
  - 12.2.1 promote increasing levels of influence of direct black owners at board level;
  - 12.2.2 encourage training and awareness programmes for all shareholders regarding the impact of indirect shareholding;
  - 12.2.3 encourage shareholder awareness through triple bottom line reporting, reporting on performance in terms of the charter and information about the institution and the sector; and
  - 12.2.4 facilitate, where possible, black companies or individuals voting on behalf of indirect owners.
- 12.3 Fund managers and asset consultants commit, as part of their obligations in the charter, to comply with the provisions of 12.2 and to improve their knowledge and that of union trustees regarding BEE transactions and targeted investment.
- 12.4 Pension fund trustees are encouraged to play an increasingly active role in promoting the objectives of the charter on their respective boards and in the entities in which they have taken significant investments.

**13. Corporate social investment**

- 13.1 Each financial institution will have a target of directing 0.5% per annum of post tax operating profits to corporate social investment (CSI) between the effective date of the charter and 2014.
- 13.2 CSI means projects aimed primarily at black groups, communities and individuals that have a strong developmental approach and contribute towards transformation.
- 13.3 CSI projects may include, but will not be limited to –
- Education: support for community education facilities; programmes at secondary and tertiary education level aimed at promoting the industry; bursaries and scholarships, which are oriented towards the hard sciences;
  - Training: community training; skills development for unemployed; adult basic education and training in communities; financial literacy programmes in communities;
  - Development Programmes for youth and other target groups ;
  - Environment support of conservation projects; community clean up projects; food garden initiatives;
  - Job Creation: job creation projects external to the workplace or any commitments contained in empowerment financing;
  - Arts & Culture: support of development programmes; development of new talent;
  - Health: support of community clinics; health programmes in the community; and
  - Sport: support of developmental programmes.

**14. Regulatory issues**

- 14.1 The regulatory environment and architecture of the sector must promote the empowerment objectives of this charter, ensure appropriate standards of entry, operation and disclosure and facilitate competition.
- 14.2 The parties to this charter agree that, in consultation with Government, the relevant aspects of the regulatory environment which inhibit compliance with the provisions of this charter will be identified and amended to allow for compliance. By the effective date of the charter the specific areas of regulatory review will be defined and attached as an annexure to the charter.
- 14.3 A key principle informing this charter is that of support for community reinvestment. Any legislation aimed at giving effect to community reinvestment or which requires the setting of targets for the financial sector or any part of it should be brought within the framework of this charter.
- 14.4 The charter will be published as a Transformation Charter in terms of the Broad-Based BEE legislation. The Minister of Trade and Industry will be requested to publish a Code of Practice which will give effect to the provisions of paragraph 4.11.2.

**15. Implementation**

**15.1 Charter council**

- 15.1.1 Fundamental principles–
- A Charter Council will be established as an independent body with a mandate to oversee the implementation of the charter.
  - The Charter Council will address the issues of principle and, in particular
    - conduct the reviews and take the decisions referred to in paragraphs 4.3 and 4.4; and
    - if there is a material change in the circumstances or the environment in which the charter has to be implemented, it will consider whether the targets and implementation strategies are still appropriate, and if not how they should be varied.
  - There will be equality between industry association representatives and all others on the Charter Council. The Charter Council must fairly reflect the interests of all the financial institutions.
  - Decisions of the Charter Council will be taken on a consensual basis. If, on any issue, the Charter Council is unable to achieve consensus, there will be a dispute-breaking mechanism in the Charter Council either by some agreed mechanism within the Charter Council, or by reference to arbitration or mediation.
- 15.1.2 The Charter Council will establish an executive to attend to its routine work and specifically to:
- receive, consider and approve annual audits from each financial institution;
  - confirm ratings of financial institutions;

- issue guidance notes on the interpretation and application of the charter;
  - prepare an annual review which outlines progress and evaluates new areas of intervention;
  - submit the annual review to the BEE Advisory Council for publication;
  - prepare interim reports at appropriate intervals;
  - undertake the reviews identified in terms of the charter;
  - accredit agencies to perform audits; and
  - engage with Government, public sector finance institutions, the BEE Advisory Council and other regulatory agencies to promote the implementation of the charter.
- 15.1.3 There will be a right to take any decision of the executive on review or appeal to the Charter Council.
- 15.1.4 The Charter Council will ensure that the executive is adequately resourced, capacitated and supported to fulfil its mandate as envisaged in the charter. A business plan will be commissioned which will, amongst other things, outline a budget for the work of the Charter Council. Financial Institutions will be required to fund the Charter Council in accordance with the budget.
- 15.2 **Reporting and Review**
- 15.2.1 Each financial institution will report annually to the Charter Council on its progress in implementing the provisions of this charter. If a financial institution is a member of a group, it should report as part of the group in the South African holding company unless –
- The financial institution is a listed company; or
  - The financial institution opts in.
- 15.2.2 The first annual report will be for the year ending 31 December 2004, and must be submitted to by 31 March 2005.
- 15.2.3 Thereafter each financial institution will report as at 31 December each year thereafter, and submit the report by 31 March of the following year.
- 15.2.4 All financial institutions will publish, for general information, an annual BEE report. The BEE report will include the audited scorecard and an account of progress in discharging unquantified responsibilities as contained in paragraph 15.2.6.
- 15.2.5 Besides the general reviews outlined in 4.3 and 4.4, the following specific areas have been identified for review, and where necessary, the setting of targets:
- all targets for black women representation on the basis of the reports for 2006;
  - 5.5 on employment equity targets for 2014 and 11 at board and executive management levels;
  - 5.7 on learnerships;
  - 6.4 on procurement;
  - 8.6 on access;
  - 9.1.3 on targeted investment; and
  - 14 on regulations.
- 15.2.6 Progress on the following unquantified responsibilities (as set out in the charter) should be reported on annually by financial institutions and submitted together with the scorecard, to the Charter Council.
- 4.10
  - 5.2
  - 5.8
  - 8.5
  - 10.5
  - 12
16. **The scorecard**
- 16.1 The scorecard set out in Annexure A forms an integral part of the financial sector charter and provides an objective and broad-based set of measurement indicators for purposes of measuring BEE progress in and between financial institutions, in different sub sectors and in the financial sector as a whole. It will be used by:
- each financial institution as a basis for self-assessment of its BEE endeavours;
  - the Charter Council as a means of evaluating BEE progress in the sector;
  - Government in the adjudication of contracts awarded to financial institutions; and

- the private sector in the awarding of contracts to financial institutions.

16.2 Financial institutions, which are exempted from any paragraph in the charter in terms of paragraph 4 will not be required to complete the specific section in the scorecard, subject to paragraph 4. Under such circumstances, the points allocated to the paragraph from which the financial institution is exempted will be cancelled, and it will score out of the remaining points and calculate its score as a percentage of that reduced remainder.

SIGNED:

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Association of Black Securities  
and Investment Professionals  
(As mandated by the Black Business Council)

\_\_\_\_\_  
Association of Collective Investments

\_\_\_\_\_  
Banking Council of South Africa

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Bond Exchange of South Africa

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Foreign Bankers Association of SA

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Investment Managers Association of SA

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Institute of Retirement Funds

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JSE Securities Exchange South Africa

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Life Offices' Association of South Africa

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South African Reinsurance Offices' Association

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South African Insurers Association