



**Liddell, Weeber & Van Der Merwe**

**Forensic Audit and  
Investigation Report:  
Platinum Forex Group**

**Date: 24 February 2017**

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## ABBREVIATIONS

### A. Entities

Abbreviation	Description
ABSA	Barclays Africa Group Ltd and related entities
ACM Gold	ACM Gold and Forex trading (Pty) Ltd
AFU	Asset Forfeiture Unit
EY	Ernst & Young Advisory Services (Pty) Ltd
FSB	Financial Services Board
GAM	Grace Apostolic Ministries
IRBA	Independent Regulatory Board for Auditors
Liddell, Weeber & Van Der Merwe	Liddell, Weeber & Van Der Merwe Attorneys at Law Inc, our instructing client
Mazars	Mazars Forensic Services (Pty) Ltd
NDPP	National Director of Public Prosecutions
Nedbank	Nedbank Ltd and related entities
PFG	Platinum Forex Group CC
SAICA	South African Institute of Chartered Accountants
SAIPA	South African Institute of Professional Accountants
SARB	South African Reserve Bank
SAPS	South African Police Service
The Shalimar Family Trust	The Shalimar Family Trust, a lender of PFG

**B. Individuals**

<b>Abbreviation</b>	<b>Description</b>
Ms Beck	Ms Heike Beck, Forensic Consultant, Mazars
Mr Bosse	Mr Sean Bosse, Admitted Attorney, Forensic Consultant, Mazars
Mr Bull	Mr John Bull, previous IT Manager PFG
Mr Cloete	Mr Charles Cloete, a lender of PFG
Mr Coetzee	Mr Claude Coetzee, a lender of PFG
Mr Davids	Mr Colin Davids, Sole Member of PFG
Mr Neville Davids	Mr Neville Davids, a lender of PFG
Mr De Reiners	Mr De Reiners, a lender of PFG
Mr Gerber	Mr Charl Gerber, Forensic Consultant, Mazars
Mr Hendricks	Mr Gerald Hendricks, a lender of PFG
Mr Herrendoerfer	Mr Eugene Herrendoerfer, FD of PFG
Mr Jean-Pierre	Mr Mark Jean-Pierre, a lender of PFG
Mr Mahoty	Mr Anver Mahoty, a lender of PFG
Mr Nappies	Mr Leon Nappies, Accounting Officer of PFG
Mr Nkontshane	Mr Sizinzo Nkontshane, a lender of PFG
Mr Rawoot	Mr Mohammed Rawoot, a lender of PFG
Mr Samuels	Mr Steven Samuels, a lender of PFG
Mr Snyman	Mr Christo Snyman, Director, Mazars
Mr Spies	Mr Allen Spies, a lender of PFG
Mr Steenkamp	Mr Jurgens Steenkamp, Court appointed Curator Bonis of PFG

Mr Thomson	Mr Gordon Thomson, a lender of PFG
Mr Van Der Merwe	Mr Leon Van Der Merwe, Partner, Liddell, Weeber & Van Der Merwe
Ms Viljoen	Ms Suzanne Viljoen, Senior Consultant, Mazars

### C. Legislation

Abbreviation	Description
Banks Act	Banks Act, 94 of 1990
Companies Act	Companies Act, 71 of 2008
CPA	Consumer Protection Act, 68 of 2008
FAIS Act	Financial Advisory and Intermediary Services Act, 37 of 2002
POC Act	Prevention of Organised Crime Act, 121 of 1998

### D. Other

Abbreviation	Description
(Pty) Ltd	Proprietary Limited
Adv	Advocate
AFS	Annual Financial Statements
CC	Closed Corporation
CIPC	Companies and Intellectual Property Commission
etc.	Etcetera
EY Report	Report submitted by EY dated 21 October 2015.
FD	Financial Director
Forex	Foreign Exchange Currency

Hawks	The Directorate for Priority Crime Investigation (“DPCI”) division of SAPS, commonly known as the Hawks
ID	Identity
i.e.	In example
IT	Information Technology
Ltd	Limited
Mr	Mister, reference to a male
Ms	Mrs or Miss, reference to a female
No	Number
NPA	National Prosecuting Authority
PIS	Public Interest Score
Prime	Prime interest rate as determined by the South Africa Reserve Bank
R	South African Rand
REPO	Repurchase rate, the interest rate at which commercial banks can borrow money from the SARB. At the date of the report the SA repo rate is 7% per annum.
Sage Pay	Online payment provider
SARB	South African Reserve Bank
US\$/USD	United States Dollars

## ANNEXURES & EXHIBITS

All references to Annexures relate to summaries, schedules, spreadsheets or information created by Mazars.

All references to Exhibits relate to third party evidentiary documentation obtained and not created by Mazars.

This report should be read in conjunction with the Annexures and Exhibits. Both are footnoted throughout the report for ease of reference. Refer to the end of this report for the Annexures and Exhibits.

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## 1. MANDATE, SCOPE & LIMITATIONS

### 1.1. Mandate

Mazars was instructed by Mr Van Der Merwe of Liddell, Weeber & Van Der Merwe to conduct a forensic audit and investigation in respect of the business and financial position of PFG as well as to comment on the findings of EY's Report regarding the same entity.

### 1.2. Scope

The primary scope of our investigation was to report on the business conducted by PFG, the financial position of PFG and the findings of EY per their Report dated 21 October 2015.

### 1.3. Limitations and qualifications

Our report is subject to the following limitations and qualifications:

#### 1.3.1. *No authentication of documentation reviewed and analysed*

Where we have had to review and/or analyse any documentation in the context of this assignment, we have reviewed and/or analysed documentation with which we have been provided and/or which we have obtained and, unless the contrary is stated in this report, we have not performed any procedures to verify and/or authenticate any such documentation.

#### 1.3.2. *Searches on public databases not controlled by us*

We cannot give any undertaking in relation to the accuracy and correctness on the information contained on public databases as this information is not controlled by us. However, we have taken every effort to verify such data.

#### 1.3.3. *Applicable Standards*

We record that we have conducted our work in accordance with the Certified Fraud Examiners Code of Professional Standards of the Association of Certified Fraud Examiners.

#### 1.3.4. *No formal legal opinion or audit*

We also record that neither our report nor any part thereof constitutes a formal legal opinion and that the procedures which we have performed, did not and do not constitute an audit or review made in accordance with International Standards on Auditing or International Standards on Review Engagements, consequently, no assurance is expressed.

### 1.3.5. *Reviewing documents and procedures performed*

The procedures performed have been in relation to the documents that we have been provided with by Mr Van Der Merwe, PFG and the relevant individuals interviewed throughout the course of the investigation. We have performed procedures according to our understanding and interpretation of our mandate.

To the extent that our mandate is to comment on the EY Report, we have done so only where necessary in this report. Our comments made on the EY Report are specifically related to the written report dated 21 October 2015. We have not performed any procedures to verify and/or authenticate any information and/or documentation relied and/or reported on by EY in the EY Report.

In this regard it should also be noted that all information available to EY was not made available to Mazars such as:

1.3.5.1. Computer hard drives seized from PFG;

1.3.5.2. Exhibits EY0001 to EY0025 to the EY Report; and

1.3.5.3. Multiple bank statements analysed by EY as subpoenaed by the AFU, SAPS and/or SARB;

and therefore our comments on the EY report are limited to the findings on information to which we had access.



## 2. BACKGROUND

- 2.1. Mr Davids is the sole member of PFG. PFG is a forex trading company that focuses on trading currencies on-line with registered and regulated forex brokers. Trading capital used to trade in forex was raised from lenders in terms of loan agreements at interest rates of between 2% to 8% per month.
- 2.2. On 23 July 2015 a preservation order was granted on the assets of PFG and Mr Davids based on the following allegations:
  - 2.2.1. unlawfully conducting a business of a “*financial service provider*” without being registered with the FSB;
  - 2.2.2. unlawfully conducting a “*business of the bank*” without being registered with the SARB in contravention of the Banks Act;
  - 2.2.3. unlawfully conducting a business of a Ponzi/Pyramid scheme and related schemes in contravention of the CPA; and
  - 2.2.4. money laundering activities in contravention of the POC Act.
- 2.3. The NDPP has subsequently applied for a final order to seize the assets of PFG and Mr Davids. As part of the evidence for the application, a report of an investigation conducted by EY was submitted. The investigation was commissioned by the SARB and based on the various documentation, bank statements, computers, etc. seized and subpoenaed on behalf of the SARB.
- 2.4. On 9 September 2016, Mazars met with Mr Liddell, Mr Van Der Merwe and Mr Davids regarding the preservation order of the NPA and a potential forensic audit required.
- 2.5. On 14 September 2016 Mazars submitted a written proposal to Mr Van Der Merwe detailing the suggested procedures regarding the investigation and proposed costs.
- 2.6. On 10 November 2016 Mazars met with Mr Van Der Merwe and Mr Davids regarding the appointment to conduct a forensic audit.
- 2.7. On 14 November 2016, Mazars was instructed to conduct a forensic audit and investigation, as per **paragraph 1.1** herein above and commenced immediately therewith in order to finalise our report on the extended date of 24 February 2017.
- 2.8. Mazars proceeded to finalise this report with the information available.

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### 3. PROCEDURES PERFORMED

The procedures performed during the investigation were as follows:

3.1. We obtained the following information:

- 3.1.1. bank statements relating to six of the 31 bank accounts analysed by EY (refer to **Annexure 1**<sup>1</sup> detailing which bank statements were received and which not);
- 3.1.2. bank statements relating to an additional bank account (ABSA account: 9284235785) not previously analysed by EY according to *Annexure EY-A* (schedule of bank accounts) of the EY Report;
- 3.1.3. the EY Report as provided by Mr van der Merwe;
- 3.1.4. legal documentation provided by Mr van der Merwe, being the preservation application and opposition thereto submitted to the High Court of the Western Cape relating to this matter;
- 3.1.5. the financial statements and available supporting documents for the period from 28 February 2011 to 15 May 2015;
- 3.1.6. the lender database and related statements from inception of PFG's business to date;
- 3.1.7. loan agreements and other contractual documentation relating to PFG's business;
- 3.1.8. ACM Gold trading accounts of PFG;
- 3.1.9. a compact disc with scanned images of information seized by SAPS;
- 3.1.10. supporting information and spreadsheets utilised to compile the financial statements from Mr Nappies.

*Please note that due to volume, the aforementioned documentation has not been attached to the Report. The information is available on request.*

3.2. We held discussions and/or conducted interviews with certain stakeholders identified by EY as well as further individuals identified throughout the investigation in order to gain an understanding of the business conducted by PFG:

- 3.2.1. Mr Davids (various discussions throughout the investigation as well as a final interview);
- 3.2.2. Mr Bull, IT Director of PFG;

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<sup>1</sup> **Annexure 1:** Bank Accounts Analysed by EY and Mazars

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- 3.2.3. Mr Steenkamp, Curator Bonis;
  - 3.2.4. Mr Herrendoerfer, former Financial Director of PFG;
  - 3.2.5. Mr Nappies, Accounting Officer of PFG;
  - 3.2.6. Mr Manuel, Independent Reviewer of the 15 May 2015 Management Statements of PFG; and
  - 3.2.7. PFG lenders, namely:
    - 3.2.7.1. Mr Spies;
    - 3.2.7.2. Mr Jean-Pierre;
    - 3.2.7.3. Mr De Reiners;
    - 3.2.7.4. Mr Coetzee;
    - 3.2.7.5. Mr Rawoot;
    - 3.2.7.6. Mr Hendricks;
    - 3.2.7.7. Mr Nkontshane;
    - 3.2.7.8. Mr Neville Davids;
    - 3.2.7.9. Mr Mahoty;
    - 3.2.7.10. The Shalimar Family Trust, represented by Mr Mahoty;
    - 3.2.7.11. Mr Thomson;
    - 3.2.7.12. Mr Cloete; and
    - 3.2.7.13. Mr Samuels

In consequence of interviews held, affidavits were drafted for the individuals however not all have been signed and received as at the date of this report. Refer to our findings in **paragraph 5.9 to 5.20** in this regard.

- 3.3. We reviewed all documentation and correspondence obtained as set out in **paragraph 3.1** above.
- 3.4. We conducted an analysis of the financial statements and supporting documentation of PFG that were provided to us.

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- 3.5. We analysed the trading accounts of ACM Gold and reviewed the recognition and measurement of the financial investments in the financial statements of PFG.
- 3.6. We scanned all relevant PDF bank statements obtained to date and converted the statements into an MS Excel format.
- 3.7. We conducted a cash flow analysis in order to do the following:
- 3.7.1. to quantify the amount deposits received from lenders;
  - 3.7.2. to quantify the amount of repayments made to lenders;
  - 3.7.3. to quantify the amount of payments made to forex brokers by PFG;
  - 3.7.4. to quantify the amount of profits and or commissions paid into the bank accounts of PFG and or Mr Davids;
  - 3.7.5. to identify and quantify and transfers between the bank accounts provided to us; and
  - 3.7.6. to categorise all other transactions according to the bank statement descriptions as per the bank accounts provided to us.
- 3.8. We reconciled the cash movements in the bank accounts, trading accounts and the accounting records to determine if transactions were accurately reflected.
- 3.9. We conducted an analysis of the lender database and related transaction tables provided to us by Mr Bull and Mr Davids.
- 3.10. We conducted an analysis of the loan balances and interest accrued to lenders of PFG as per the lender database obtained from Mr Bull.
- 3.11. We compiled this Report with all our findings.

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## 4. LEGISLATIVE FRAMEWORK

### Common law definitions as per *Criminal Law (Sixth Edition)* by CR Snyman

*Fraud:* Fraud is the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another.

### Banks Act

The Banks Act prescribes limitations (*subject to certain exemptions*) for a business to conduct itself as a deposit taking institution and/or the conducting of its business as a bank. The following sections of the Banks Act are relevant to this investigation:

#### 1. Definitions

“**bank**” means a public company registered as a bank in terms of this Act

“**deposit**” when used as a noun, means an amount of money paid by one person to another person subject to an agreement in terms of which—

- (a) an equal amount or any part thereof will be conditionally or unconditionally repaid, either by the person to whom the money has been so paid or by any other person, with or without a premium, on demand or at specified or unspecified dates or in circumstances agreed to by or on behalf of the person making the payment and the person receiving it; and
- (b) no interest will be payable on the amount so paid or interest will be payable thereon at specified intervals or otherwise,

notwithstanding that such payment is limited to a fixed amount or that a transferable or non-transferable certificate or other instrument providing for the repayment of such amount *mutatis mutandis* as contemplated in paragraph (a) or for the payment of interest on such amount *mutatis mutandis* as contemplated in paragraph (b) is issued in respect of such amount; but does not include an amount of money—

- (i) paid as an advance, or as part payment, in terms of a contract for the sale, letting and hiring or other provision of movable or immovable property or of services, and which is repayable only in the event of—
  - (aa) that property or those services not in fact being sold, let and hired or otherwise provided;

- (bb) the fulfilment of a resolute condition forming part of that contract; or
- (cc) the non-fulfilment of a suspensive condition forming part of that contract;
- (ii) paid as security for the performance of a contract or as security in respect of any loss which may result from the non-performance of a contract;
- (iii) without derogating from the provisions of paragraph (ii), paid as security for the delivery up or return of any movable or immovable property, whether in a particular state of repair or otherwise;
- (iv) paid by a holding company, or by a subsidiary to its holding company, or by one subsidiary to another subsidiary of the same holding company;
- (v) paid by a person who, at the time of such payment—
  - (aa) is a close relative of the person to whom such money is paid;
  - (bb) is a director or executive officer of the person to whom such money is paid; or
  - (cc) is a close relative of a director or executive officer of the person to whom such money is paid;
- (vi) paid by any person to a registered long-term insurer as defined in section 1 of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), as a premium in respect of any kind of policy defined or referred to in the Long-term Insurance Act, 1998, and under which policy that long-term insurer assumes, in return for such premium, such obligation as is described in the Long-term Insurance Act, 1998;
- (vii) paid to a fund registered or provisionally registered under section 4 of the Pension Funds Act, 1956 (Act No. 24 of 1956), as a contribution, contemplated in section 13A of that Act, by or on behalf of a member of that fund;
- (viii) paid to a benefit fund, as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), as a contribution or a subscription by or on behalf of a member of that fund; or
- (ix) paid by any person to a registered short-term insurer as defined in section 1 of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), as a premium in respect of any kind of policy defined or referred in the Short-term Insurance Act, 1998, and under which policy that short-term insurer assumes, in return for such premium, the obligation described in the Short-term Insurance Act, 1998;

and "deposit" when used as a verb, or any derivative thereof, has a corresponding meaning;

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**"deposit-taking institution"** *Definition deleted by section 1(b) of Act No. 9 of 1993 and replaced by the definition of "bank"*

**"public company"** has the meaning ascribed to that expression in section 1 of the Companies Act

**"the business of a bank"** means—

- (a) the acceptance of deposits from the general public (including persons in the employ of the person so accepting deposits) as a regular feature of the business in question;
- (b) the soliciting of or advertising for deposits;
- (c) the utilization of money, or of the interest or other income earned on money, accepted by way of deposit as contemplated in paragraph (a)—
  - (i) for the granting by any person, acting as lender in such person's own name or through the medium of a trust or a nominee, of loans to other persons;
  - (ii) for investment by any person, acting as investor in such person's own name or through the medium of a trust or a nominee; or
  - (iii) for the financing, wholly or to any material extent, by any person of any other business activity conducted by such person in his or her own name or through the medium of a trust or a nominee;
- (d) the obtaining, as a regular feature of the business in question, of money through the sale of an asset, to any person other than a bank, subject to an agreement in terms of which the seller undertakes to purchase from the buyer at a future date the asset so sold or any other asset; or
- (e) any other activity which the Registrar has, after consultation with the Governor of the Reserve Bank, by notice in the Gazette declared to be the business of a bank,

but does not include—

- (aa) the acceptance of a deposit by a person who does not purport to accept deposits on a regular basis and who has not advertised for or solicited such deposit: Provided that—
  - (i) the person accepting deposits as contemplated in this paragraph shall not at any time hold deposits from more than twenty persons or deposits amounting in the aggregate to more than R500 000; and
  - (ii) a person and any person controlled directly or indirectly by the first-mentioned person (whether such control is through shareholding or otherwise) or managed by such first-mentioned person, and a subsidiary of such last-mentioned person, who accepts

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deposits as contemplated in this paragraph shall for the purposes of subparagraph (i) of this proviso be deemed to be one person;

- (bb) the borrowing of money from its members by a co-operative subject to such conditions as may be prescribed;
- (cc) any activity of a public sector, governmental or other institution, or of any person or category of persons, designated by the Registrar, with the approval of the Minister, by notice in the Gazette, provided such activity is performed in accordance with such conditions as the Registrar may with the approval of the Minister determine in the relevant notice;
- (dd) any activity contemplated in paragraph (a), (b) or (c)—
  - (i) performed by any institution registered or established in terms of, by or under any other Act of Parliament and designated by the Minister by notice in the Gazette; or
  - (ii) performed in terms of any scheme authorized and controlled by, and conducted in accordance with the provisions of, any other Act of Parliament and so designated by the Minister,

provided such activity is performed in accordance with such conditions as the Minister may determine in the relevant notice;

- (ee) deleted;
- (ff) the effecting, subject to the provisions of any other Act of Parliament and to such conditions, if any, as the Registrar may from the [sic] time to time determine by notice in the Gazette, of a money lending transaction directly between a lender and a bank as borrower through the intermediation of a third party who does not act as a principal to the transaction (hereinafter in this paragraph referred to as the agent), provided the funds to be lent in terms of the money landing transaction are entrusted by the lender to the agent subject to a written contract of agency in which, in addition to any other terms thereof, at least the following matters shall be recorded:
  - (i) Confirmation that the agent acts as the agent of the lender; and
  - (ii) that the lender assumes, except in so far as there may in law be a right of recovery against the agent, all risks connected with the administration of the entrusted funds by the agent, as well as the responsibility to ensure that the agent executes the instructions as recorded in the written contract of agency; or



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- (gg) the activities, set forth in subparagraphs (A) and (B) hereunder, of a person (hereinafter in this paragraph referred to as the mandatory) that—
- (i) is a natural or juristic person registered in terms of, by or under such other Act of Parliament; and
  - (ii) has been designated by the Registrar by notice in the Gazette,
- which mandatory, for purposes of effecting a money lending transaction with a bank—
- (A) accepts money from the mandator in terms of a prescribed contract of mandate; and
  - (B) in the execution of the mandate, and subject to such conditions as the Registrar may determine in the notice referred to in subparagraph (ii) above, deposits such money into an account maintained by the mandatory with a bank, irrespective as to whether or not such money is so deposited together with money so accepted by the mandatory from the other mandators.

#### *11. Registration Prerequisite For Conducting Business of a Bank*

- (1) Subject to the provisions of section 18A, no person shall conduct the business of a bank unless such person is a public company and is registered as a bank in terms of this Act.
- (2) Any person who contravenes a provision of subsection (1) shall be guilty of an offence.

#### *12. Application For Authorisation To Establish a Bank*

- (1) Any person who wishes to conduct the business of a bank may apply to the Registrar for authorization to establish such a bank.
- (2) An application under subsection (1)—
  - (a) shall be made in the manner and on the form prescribed in the Regulations relating to Banks; and
  - (b) shall be accompanied by a statement containing the information prescribed in the Regulations relating to Banks.
- (3) ...

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**Government Gazette Notice 2172 (14 December 1994)****“Definitions”****“commercial paper” means-**

- (1) Any written acknowledgement of debt irrespective of whether the maturity thereof is fixed or based on a notice period, and irrespective of whether the rate at which interest is payable in respect of the debt in question is fixed or a floating rate; and
- (2) Debentures or any interest-bearing written acknowledgement of debt issued for a fixed term in accordance with the Companies Act, 1973 (Act 61 of 1973), but does not include bankers' acceptance

**General conditions for the issue of commercial paper**

- (1) The issue of commercial paper in terms of this Notice shall be subject to the following conditions:
  - (a) ...
  - (b) be issued only by-
    - (i) a listed company;
    - (ii) ...
    - (iii) ...

Unless

- (A) the instruments are listed on a recognised financial exchange; or
- (B) the instruments are endorsed by a bank; or
- (C) the instruments are issued for a period longer than five years; or
- (D) the instruments are issued by central Government; or
- (E) the instruments are backed by an explicit Central Government Guarantee

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**Government Notice 498 (27 March 1997)**

The following activities constitute the business of a bank:

- (2) The acceptance of obtaining money, directly or indirectly, from members of the public, as a regular feature of a business practice, with the prospect of such members (hereinafter referred to as the participating members) receiving payments or other money-related benefits, directly or indirectly-
  - (a) On or after the introduction of other members of the public to the business practice...for which participating members, in turn, money is accepted or obtained directly or indirectly, as a regular feature of the business practice, whether or not-
    - (i) In the introduction of the new participating member is limited to their introduction by participating members or extends to the introduction of the new participating members by other persons; or
    - (ii) New participating members are required to acquire movable or immovable property, rights or services
  - (b) ...
  - (c) For funds accepted or obtained from participating members or new participating members within the business practice.

**Consumer Protection Act**

The CPA prescribes protection of consumers exposed to or involved in pyramid schemes. The following sections of the CPA are relevant to this investigation:

*1. Definitions*

“**consideration**” means anything of value given and accepted in exchange for goods or services, including-

- (a) money, property, a cheque or other negotiable instrument, a token, a ticket, electronic credit, credit, debit or electronic chip or similar object;
- (b) ...
- (c) ...
- (d) any other thing, undertaking, promise, agreement or assurance

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irrespective of its apparent or intrinsic value or whether it is transferred directly or indirectly, or involves only the supplier and consumer or other parties in addition to the supplier and consumer.

Section 43 of the CPA deals directly with multiplication/pyramid schemes. The following sections thereof are relevant:

*43. Pyramid and related schemes-*

- (1) In this section-
  - (a) “**consideration**” has the meaning set out in section 1, except that it does not include-
    - (i) The purchase of any goods at cost to be used in making sales, or not for resale;
    - (ii) The purchase of any goods in exchange for which the seller of those goods offers to repurchase the participant’s products under reasonable commercial terms; or
    - (iii) The participant’s time and effort in pursuit of sales and recruiting activities
  - (b) “**participant**” means a person admitted to a scheme for consideration
- (2) A person must not directly or indirectly promote, or knowingly join or enter or participate in-
  - (a) A multiplication scheme, as defined in subsection (3);
  - (a) A pyramid scheme, as defined in subsection (4)
  - (c) ...
  - (d) ...

Or cause any other person to do so.
- (3) A multiplication scheme exists when a person offers, promises or guarantees to any consumer, investor or participant an effective annual interest rate, as calculated in the prescribed manner, that is at least 20 percent above the REPO Rate determined by the South African reserve Bank as at the date of investment or commencement of participation, irrespective of whether the consumer, investor or participant becomes a member of the lending party.

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- (4) An arrangement, agreement, practice of scheme is a pyramid scheme if-
- (a) Participants in the scheme receive compensation derived primarily from their recruitment of other persons as participants rather than from the sale of goods or services; or
  - (b) The emphasis in the promotion of the scheme indicates an arrangement or practice contemplated in paragraph (a)
- (5) ...
- (6) ...

## 5. FINDINGS

### A FINANCIAL AND OPERATIONAL ANALYSIS

#### 5.1. Cash Flow Analysis

5.1.1. Our findings set out below are based on the analysis of the relevant bank statements that we received up to the date of this report.

5.1.2. We set out below a schedule of all the relevant bank statements analysed:

**Table 1: Bank Accounts Analysed**

No	Bank	Account Number	Account holder	Period start date	Period end date
1	Nedbank	1032792000	Colin Davids	31/08/2012	30/07/2015
2	Nedbank	1044092203	Colin Davids t/a Platinum Forex	24/07/2009	24/07/2015
3	Nedbank	1076089003	The Plattekloof Trust	12/06/2014	01/07/2015
4	Nedbank	1093302399	Colin Davids (Platinum Forex CC)	06/02/2015	23/07/2015

5.1.3. We note that we were unable to obtain bank statements for the period 1 to 3 July 2015 in respect of both Nedbank accounts 1032792000 and 1093302399.

5.1.4. For the purpose of the bank statement analysis (herein further referred to as the “cash flow analysis”) we categorised the above bank accounts as follows:

**Table 2: Classification of the Bank Accounts**

Category	Description
Personal	Bank accounts identified by Mr Davids as being used for personal transactions (accounts one and three in the table above)
Business	Bank accounts identified by Mr Davids as being used primarily for business transactions. These accounts however are also used for personal transactions (accounts two and four in the table above)

5.1.5. Further to the above, we categorised the following individuals as role players for the purpose of our cash flow analysis:

5.1.5.1. Mr Davids;

5.1.5.2. Mr Bull;

- 
- 5.1.5.3. Mr Bredenkamp; and
- 5.1.5.4. Mr Herrendoerfer.
- 5.1.6. We used the same category names that EY used in their cash flow analysis as far as possible in order to be able to make the relevant comparisons.
- 5.1.7. For the purpose of our report we set out the detail in respect the categories deemed most relevant to our investigation below.
- 5.1.8. The following categories were not discussed in detail due to either the transactions being deemed less relevant to our investigation or that limited information were available in respect thereof:
- 5.1.8.1. cash withdrawals;
- 5.1.8.2. unknown transfers;
- 5.1.8.3. other (unpaid, reversals, effect of missing bank statements etc.); and
- 5.1.8.4. transfers to Curator Bonis.
- 5.1.9. **Cash Inflows**
- 5.1.9.1. To date we identified cash inflows amounting to R355,693,926.00 in total (excluding inter-account transfers, unpaid and reversals).
- 5.1.9.2. We further identified inter-account transfer inflows amounting to R553,794,974.00 in total i.e. cash inflows from bank accounts in the name PFG and/or Mr Davids.
- 5.1.9.3. It should be noted that the substantial amount of cash inflows relating to internal account transfers is the result of a monthly transfer of approximately R50,000,000.00 to the Nedbank investment accounts of Mr Davids and the repayment of the same amount approximately 30 days later with interest (interest paid separately).
- 5.1.9.4. Mr Davids informed us that this was an investment decision made by himself in consultation with Nedbank in order to earn interest on lenders' deposits.
- 5.1.9.5. We categorised the cash inflows according to the bank statement descriptions as follows:

**Table 3: Cash Inflows per the Bank Statements**

Category	Business accounts (ZAR)	Personal accounts (ZAR)	Total (ZAR)	No of transactions	Paragraph reference
Deposits from lenders	329,183,079.00	9,500.00	329,192,579.00	3617	<b>5.1.9.6</b>
Deposits from Forex Brokers	23,616,677.00	-	23,616,677.00	24	<b>5.1.9.7</b>
Interest received	2,404,754.00	-	2,404,754.00	24	<b>5.1.9.8</b>
Cash deposits	108,000.00	-	108,000.00	9	<b>5.1.9.9</b>
Other deposits	246,915.00	-	245,915.00	11	<b>5.1.9.10</b>
Deposits from role players	100,000.00	-	100,000.00	1	
Deposits from beneficiaries	25,000.00	-	25,000.00	1	
<b>Sub-total excluding inter-account transfers and other categories</b>	<b>355,684,426.00</b>	<b>9,500.00</b>	<b>355,693,926.00</b>		
Inter-account transfers	548,965,149.00	4,829,825.00	553,794,974.00	132	<b>5.1.11</b>
Other	1,410,746.00	171,385.00	1,582,131.00	12	
<b>Total cash inflows</b>	<b>906,060,321.00</b>	<b>5,010,711.00</b>	<b>911,071,032.00</b>		

5.1.9.6. *Deposits from lenders*

- 5.1.9.6.1. Where the bank statement description of a deposit made reference to a lender's name, ID number, lender account number or cell phone number, we classified the deposit as a deposit from a lender.
- 5.1.9.6.2. To date we identified 3,617 deposits from lenders amounting to R329,192,579.00 over the period 24 July 2009 to 22 July 2015. We



noted that the majority of the deposits were made in the 2014 and 2015 calendar years.

- 5.1.9.6.3. It should be noted however that deposits were regularly and continuously received by lenders over the period from 5 July 2010 to 22 July 2015<sup>2</sup>
- 5.1.9.6.4. We further note that we have been able to match the details of certain lenders according to the bank statement descriptions to the lender database. The matched lenders were responsible for making deposits to the amount of approximately R325,794,475.26 in total. It appears that the remainder of the deposits as per the bank statements may also relate to lenders' deposits.
- 5.1.9.6.5. In this regard it appears that the majority of the R329,217,579 deposits classified as "Deposits from lenders" matches directly to the lender database.
- 5.1.9.6.6. We note that the EY Report make reference to lenders as "investors". Based on the loan agreements and interviews held with lenders, we submit reference to "investors" should be correctly referenced as "lenders".
- 5.1.9.6.7. We note that according to the EY Report deposits from lenders amounted to R329,306,174.91 in total. In this regard we noted no significant difference to our findings.
- 5.1.9.7. *Deposits from forex brokers*
- 5.1.9.7.1. Deposits were classified as "deposits from forex brokers" where the bank statement description made reference to an entity which business activities includes forex trading.
- 5.1.9.7.2. We set out below a table of the deposits per forex trading entity:

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<sup>2</sup> **Annexure 2:** Annual Summary of Deposits received from Lenders since 24 July 2009 to 22 July 2015.

**Table 4: Deposits from forex brokers**

Forex trading entity	Amount (ZAR)
ACM Gold	23,541,302.00
Easy Forex	75,376.00
<b>Total</b>	<b>23,616,677.00</b>

- 5.1.9.7.3. Mr Davids informed us that the deposits from ACM Gold relates to commissions and/or rebates earned based on the volume of trading activities.
- 5.1.9.7.4. According to the ACM Gold trading accounts, no transfers of forex profits were made from the trading accounts to the bank accounts of PFG and/or Mr Davids. In this regard the payments from ACM Gold appear to be related to commissions and/or rebates as indicated by Mr Davids.
- 5.1.9.7.5. We were unable to determine if the deposits from Easy Forex related to commissions earned or forex profits made.
- 5.1.9.7.6. We note that EY classified the above deposits as “*Forex profits and commissions*”. Based on the evidence however, the majority of these deposits related to commissions and/or rebates earned and not forex profits.
- 5.1.9.7.7. We further note that EY identified R818,610.82 of deposits from Easy Forex in comparison to an amount of R75,376.00 identified by us. The difference may be the result of EY having access to more bank accounts. Refer to **Annexure 1** in this regard.
- 5.1.9.7.8. However, no further differences between our findings in comparison to EY’s findings in this regard.
- 5.1.9.8. *Interest received*
- 5.1.9.8.1. Deposits were classified as bank “interest earned” where the bank statement description depicted “*INT*” followed by a further description making reference to an investment account.
- 5.1.9.8.2. To date we have classified a total amount of R2,404,754.00 as Bank interest earned.

5.1.9.8.3. Mr Davids held 19 investment accounts with Nedbank opened in his personal name. Mr Davids informed us that he used these accounts to invest deposits from lenders on a 30-day basis. The interest earned was deposited into Nedbank account 1044092203 which Mr Davids primarily used for business purposes.

5.1.9.8.4. We noted no material differences between our findings in comparison to EY's findings in this regard.

5.1.9.9. *Cash Deposits*

5.1.9.9.1. Deposits were classified as "cash deposits" where the bank statement description depicted "Cash dep" or similar description and we were unable to obtain further information relating to the nature of the deposits.

5.1.9.9.2. We identified cash deposits amounting to R108,000.00 in total.

5.1.9.9.3. We note that these deposits may represent further deposits from lenders.

5.1.9.10. *Other Deposits*

5.1.9.10.1. Deposits were classified as "other deposits" where the bank statement description in the absence of further clarification by Mr Davids did not provide us with sufficient information in order to accurately classify the deposit.

**Table 5: Other deposits**

Other deposits	Amount (ZAR)
Salary	233,100.00
Duvenhage Attorneys	11,901.03
<b>Total</b>	<b>245,001.03</b>

5.1.9.10.2. We note that the amount of R245,001.03 classified as "other deposits" consisted mainly of four deposits amounting to R233,100 in total of which the bank statement description depicted "Salary".

5.1.9.10.3. We were not able to obtain further information from Mr Davids relating to the origin and nature of these deposit to the business accounts of Mr Davids

### Cash Outflows

5.1.9.11. We identified cash outflows amounting to R307,282,644.00 in total (excluding inter-account transfers, unpaid and reversals).

5.1.9.12. It should be noted that the substantial amount of cash outflows relating to internal account transfers is the result of a monthly transfer of approximately R50,000,000.00 to Nedbank investment accounts of Mr Davids and the repayment of the same amount approximately 30 days later with interest (interest paid separately).

As per Mr Davids, the trading philosophy of PFG was to commit up to 50% of the funds received to trading and to invest the remaining 50% in the investment accounts. As noted herein above in **paragraph 5.1.9.3**, of the total deposits from lenders, a maximum of approximately R50,000,000.00 was invested in the 30-day investment account during any given month.

5.1.9.13. We categorised the cash outflows according to the bank statement descriptions as follows:

**Table 6: Summary of the Cash Outflows per the Bank Statements**

Category	Business Accounts	Personal Accounts	Amount (ZAR)	No of Transactions	Paragraph Reference
Payments to lenders	138,758,233.00	43,780.00	138,802,013.00	2,685	<b>5.1.10.4</b>
Payments to Forex Brokers	84,809,361.00	12,839.00	84,822,201.00	800	<b>5.1.10.5</b>
Purchase of PFG trading software	162,555.00	-	162,555.00	36	<b>5.1.10.6</b>
Cash withdrawals	459,651.00	185,100.00	644,751.00	677	
Unknown transfers	313,925.00	44,574.00	360,450.00	18	

Operating expenses	10,164,339.00	240,710.00	10,405,049.00	3,521	<b>5.1.10.7</b>
Personal expenses	10,221,974.00	1,810,572.00	12,032,546.00	4,314	<b>5.1.10.8</b>
Payments to role players	2,478,023.00	30,600.00	2,508,623.00	361	<b>5.1.10.10</b>
Payments to beneficiaries	13,446,852.00	1,113,200.00	14,560,052.00	418	<b>5.1.10.11</b>
Personal assets purchased	5,563,987.00	14,360.00	5,578,347.00	25	
Transfers to Curator Bonis	37,329,475.00	76,583.00	37,406,057.00	9	
<b>Sub-total excluding inter-account transfers and other category</b>	<b>303,710,327.00</b>	<b>3,572,317.00</b>	<b>307,282,644.00</b>		
Inter-account transfers	602,559,795.00	1,260,700.00	603,820,495.00	130	<b>5.1.11</b>
Other	21,353.00	177,693.00	199,047.00	11	
<b>Total cash outflows</b>	<b>906,291,476.00</b>	<b>5,010,711.00</b>	<b>911,302,187.00</b>		

#### 5.1.9.14. *Payments to lenders*

5.1.9.14.1. Cash out-flows were classified as “payments to lenders” in instances where the bank statement description depicted a lender’s name, ID number, lender account number or cell phone number or a combination thereof.

5.1.9.14.2. To date we identified 2,685 payments to lenders amounting to R138,802,013.00 over the period from 13 November 2009 to 20 July 2015. We noted that the majority of the payments were made in the 2014 and 2015 calendar years.

- 5.1.9.14.3. We note that the EY Report make reference to lenders as “investors”. Based on the loan agreements and interviews held with lenders, we submit reference to “investors” should be correctly referenced as “lenders”.
- 5.1.9.14.4. We note that according to the EY Report payments to lenders amounted to R133,850,931.00 in total. In this regard we noted no significant difference to our findings.
- 5.1.9.15. *Payments to forex brokers*
- 5.1.9.15.1. Cash outflows were classified as “payments to forex brokers” where the bank statement description made reference to an entity which business activities appears to include forex trading.
- 5.1.9.15.2. We set out below a table of the payments categorise per forex trading entity:

**Table 7: Payments per Forex Entity**

Forex Trading Entity	Amount (ZAR)
ACM Gold	79,586,270.00
ACM Gold - Lenders	706,000.00
Easy Forex	3,036,138.00
UFX Bank.com	83,567.08
UFX Markets	873,888.15
FX Pro	238,487.32
Easy Forex (lender)	717,850.33
UFX Bank	60,869.38
PLI MBFX Forex	833.25
Passive FX	523.41
ForesightFX	79.52
Paypal Forex	3,858.08
Forex Trading GAP	3,235.36

Alpari Financial Services	216,600.92
<b>Total</b>	<b>84,822,201.00</b>

- 5.1.9.15.3. According to the bank statement the majority of payments were made to forex broker ACM Gold, namely R80,292,270.00 (R79,586,270.00 + R706,000.00) of the total amount of R84,822,176.00 transferred to forex brokers i.e. 94.7%.
- 5.1.9.15.4. We noted that in certain instances the bank statement description of payments depicted the name of a lender together with a reference to ACM Gold. These payments have been classified as “ACM Gold – Lenders” and amounted to R706,000.00 in total. These payments represent payments to ACM Gold on behalf of lenders.
- 5.1.9.15.5. The transfers to ACM Gold were made between 14 April 2014 and 17 July 2015.
- 5.1.9.15.6. We further noted that no transfers were made from the ACM Gold trading accounts to any of the bank accounts provided to us.
- 5.1.9.15.7. In this regard, Mr Davids informed us that he decided not to withdraw any funds from the trading accounts in order to save on bank charges.
- 5.1.9.15.8. We note that according to the EY Report payments to forex brokers amounted to R87,542,937.59 in total. In this regard we noted no significant difference to our findings.
- 5.1.9.16. *Purchase of PFG Trading Software*
- 5.1.9.16.1. Transactions were categorised as “purchase of PFG trading software” where the bank statement descriptions of these payments made reference to “software” or where Mr Davids informed us that the transaction related to software purchases.
- 5.1.9.16.2. To date we have classified transactions amounting to R162,554.94 to the purchase of PFG trading software category.
- 5.1.9.16.3. We note that according to the EY Report “Purchase of PFG Trading software” amounted to R9,948.62 in total. In this regard we noted no significant difference to our findings.

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#### 5.1.9.17. *Operating expenses*

5.1.9.17.1. Transactions were categorised as “operating expenses” where the bank statement description of the transactions appeared to be related to operating expenses of PFG.

5.1.9.17.2. We identified operating expenses<sup>3</sup> amounting to R10,405,048.57 from the bank statements analysed. We note that R240,709.84 of the R10,405,048.57 operating expenses were paid from Mr Davids’ personal accounts.

5.1.9.17.3. We note that according to the EY Report payments classified as operating expenses amounted to R11,332,314.94 in total. In this regard we noted no significant difference to our findings.

#### 5.1.9.18. *Personal expenses*

5.1.9.18.1. Transactions were categorised as “Personal expenses” where the bank statement description of the transactions appeared to be related to personal expenses of Mr Davids.

5.1.9.18.2. We identified personal expenses amounting to R12,032,227.57 from the bank statements analysed<sup>4</sup>.

5.1.9.18.3. We identified that personal expenses of R10,221,655.59 were paid from the business accounts of PFG. In this regard, we note that personal expenses were allocated to the loan account of Mr Davids in the financial statements and/or management accounts of PFG.

5.1.9.18.4. We note that according to the EY Report payments classified as personal expenses amounted to R17,370,082.13 in total.

5.1.9.18.5. In this regard we note that the difference of R5,337,854.60 (R17,370,082.13 – R12,032,227.57) may relate to differences in classification of assets purchased. Refer to the section “*Purchase of assets*” below.

#### 5.1.9.19. *Purchase of assets*

5.1.9.19.1. We identified payments amounting to R5,578,347.00 with bank statement description “*Plattekloof Cape Oceans Invest*” which

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<sup>3</sup> **Annexure 3:** Detailed Schedule of Operating Expenses

<sup>4</sup> **Annexure 4:** Detailed Schedule of Personal Expenses



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consist of payments in respect of a holiday house purchased in Hermanus by Mr Davids.

- 5.1.9.19.2. It should be noted that other assets purchased may be classified as “personal expenses” (refer to section above) as the bank statement descriptions does not provide sufficient detail in order to be able to separate the personal expenses from personal assets purchased.
- 5.1.9.19.3. We further noted that according to the EY Report payments classified as “purchase of assets” amounted to R11,746,244.15 in total.
- 5.1.9.19.4. In this regard we note that the difference of R6,167,897.00 (R11,746,244.15 – R5,578,347.00) may relate to differences in classification of assets purchased. Refer to the section “*Personal expenses*” above.
- 5.1.9.19.5. It should be noted that the difference between payments classified as assets and personal expenses between our Report and the EY Report will not have a material impact on our findings in this report.
- 5.1.9.20. *Payments to role players*
  - 5.1.9.20.1. We classified payments as “payments to role players” where the bank statement descriptions made reference to the name of one of the identified role players.
  - 5.1.9.20.2. We classified payments amounting to R2,508,623.00 as payments to role players.
  - 5.1.9.20.3. Refer to the table below for a summary of payments to the identified role players:

**Table 8: Payments to Role Players**

Role player	Amount (ZAR)	Number of transactions
Mr Davids	92,456.52	170
Mr Bull	489,487.31	46
Mr Bredenkamp	1,911,721.45	144
Mr Herrendoerfer	14,958.00	1
<b>Total</b>	<b>2,508,623.28</b>	

- 5.1.9.20.4. We were not able to determine the nature of the payments to Mr Bull, Mr Bredenkamp and Mr Herrendoerfer.
- 5.1.9.20.5. In addition, we noted a deposit of R100,000.00 with a bank statement description indicating the name of Mr Bull. Mr Davids was not able to recall what the deposit was for. We classified the deposit as “deposit from role players”.
- 5.1.9.20.6. We note that the EY Report indicates that payment to role players amounted to R599,349,163.93.
- 5.1.9.20.7. We have not been provided with a readable copy of *Annexure EY-B* to the EY Report and were not able to view the breakdown of the payments amounting to R599,349,163.93.
- 5.1.9.20.8. It appears that inter-account transfers from the business accounts to the Nedbank accounts of Mr Davids were classified as “payments to role players” according to the EY Report.
- 5.1.9.20.9. The bank statements indicate that the Nedbank accounts were used to invest lenders’ funds on a monthly basis. In this regard it is our view that the transfers to the Nedbank accounts should not be classified as Payments to role players.
- 5.1.9.20.10. Refer to the section “*Inter-account Transfers*” below for more detail in this regard.

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#### 5.1.9.21. *Payments to beneficiaries*

- 5.1.9.21.1. The EY Report indicated that payments amounting to R6,175,233.49 were classified as “payments to beneficiaries” and were set out in more detail in their *Annexure EY-D* to the report<sup>5</sup>
- 5.1.9.21.2. Mr Davids reviewed *Annexure EY-D* and indicated that the majority of the payments identified by EY represented donations to the various beneficiaries.
- 5.1.9.21.3. We noted various additional payments to beneficiary Grace Apostolic Ministries (“GAM”) amounting to R9,335,644.00 in total. Mr Davids informed us that GAM is the “*social responsibility arm*” of PFG that administered funds to various charities.
- 5.1.9.21.4. We classified all payments of which the bank statement description made reference to GAM as payments to beneficiaries.
- 5.1.9.21.5. In this regard we classified a total amount of R14,560,052.00<sup>6</sup> as payments to beneficiaries.
- 5.1.9.21.6. We further noted a deposit amounting to R25,000.00 with a bank statement description depicting the name of one of the beneficiaries, namely “*Wagner Church*”. We classified the deposit as a “Deposit from beneficiaries”.
- 5.1.9.21.7. We noted no significant differences to the EY Report findings apart from the additional payments to GAM that we identified and classified as “Payments to beneficiaries”.

#### 5.1.10. **Inter-account Transfers**

##### 5.1.10.1. *Cash in and out flows*

- 5.1.10.1.1. Transactions were categorised as “inter-account transfers” where a transfer from one account could be matched to a transfer to another account of Mr Davids and or PFG based on date, amount and bank statement description, or only bank statement description<sup>7</sup>.

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<sup>5</sup> **Exhibit 1:** Annexure EY-D of the EY Report

<sup>6</sup> **Annexure 5:** Schedule of Payments to Beneficiaries

<sup>7</sup> **Annexure 6:** Detailed Summary of the Inter-account Transfers

- 5.1.10.1.2. Where a transfer was matched from one account to another account, we categorised the transfer as “inter-account transfer matched”.
- 5.1.10.1.3. Where a transfer was only matched based on bank statement description i.e. the bank statement description depicted the account number of one of the bank accounts that we analysed, we categorised the transfer as “inter-account transfer unmatched”.
- 5.1.10.1.4. We identified total inter-account transfer inflows of R553,794,975.00 and total inter-account transfer outflows of R603,820,495.00 (matched and unmatched).
- 5.1.10.1.5. In this regard our cash flow analysis revealed a net cash outflow of R50,025,521.00.
- 5.1.10.1.6. The net cash outflow primarily consists of the balance transferred to Nedbank investment accounts used by Mr Davids to earn interest on lenders’ funds. Over the period of review, Mr Davids transferred a total amount of R589,409,470.00 from the business accounts to Nedbank investment accounts and a total amount of R539,878,831.00 was transferred back from the Nedbank investment accounts to the business accounts resulting in a net balance of R49,530,639.00.
- 5.1.10.2. *Transfers from the business accounts to Mr Davids’ personal accounts*
- 5.1.10.2.1. We were able to match transfers amounting to R4,693,825.00 in total from the business accounts to Mr Davids’ personal account.
- 5.1.10.2.2. We further classified a transfer of R100,000.00 as an unmatched inter-account transfer from the business accounts to Mr Davids’ personal account.
- 5.1.10.2.3. We also noted transfers amounting to R1,256,500.00 from the business accounts where the bank statement descriptions appeared to make reference to a credit card. We were unable to determine if these payments related to business or personal credit cards of Mr Davids.

### 5.1.10.3. Transfers from Mr Davids' personal accounts to the business accounts

5.1.10.3.1. We noted transfers amounting to R1,986,318.00 from Mr Davids' personal accounts to the business accounts. We were only able to match an amount of R228,000.00 of the total amount of R1,986,318.00 of transfers identified.

## 5.2. Trading analysis

### 5.2.1. Trading activities of Mr Davids

5.2.1.1. As indicated above, we noted that an amount of R84,822,201.00 had been transferred to forex brokers over the entire period of review. Of the R84,822,201.00 an amount of R79,586,270.00 was transferred to forex broker ACM Gold for the account of Mr Davids i.e. 93.8% of the total funds transferred to forex brokers.

5.2.1.2. Due to the aforementioned, we focussed our review of the trading activities on the accounts held with ACM Gold.

5.2.1.3. Refer to a table below setting out a summary of the ACM Gold trading account:

**Table 9: Summary of ACM Gold Trading Account**

Description	Trading account: 5307060	Trading account: 5313261	Total
Total payments to ACM Gold (USD)	3,573,204.27	2,921,933.58	6,495,137.85
Total profits (USD)	12,847,231.70	8,162,045.95	21,009,277.65
Total losses (USD)	(16,361,303.80)	(11,079,279.10)	(27,440,582.90)
Total balance as at 23 July 2015 (USD)	<b>59,132.17</b>	<b>4,700.43</b>	<b>3,832.60</b>
<b>Total balance as at 23 July 2015 (ZAR)<sup>8</sup></b>	<b>734,422.00</b>	<b>58,374.00</b>	<b>792,796.00</b>

5.2.1.4. As per the table above, an amount of R792,796.00 remained in the trading accounts with ACM Gold as at 23 July 2015, the last trading day according to the ACM Gold trading accounts provided to us.

5.2.1.5. In this regard, we note that an amount of approximately R78,793,474.00 (R79,586,270.00 – R792,796.00) had been lost through trading by Mr Davids from

<sup>8</sup> USD/ZAR closing rate for the 24-hour period ending Thursday, July 23, 2015 – R12.42 (source: *Oanda.com*)

18 March 2014 to 23 July 2015. According to the EY report a conversion rate of R12,73 to USD1 was used to calculate the closing balance in the ACM Gold trading account as at 7 August 2015. As we calculated the closing balance at 23 July 2015 on the last day of trading, we used a conversion rate of R12.42 to USD1. The difference however is immaterial.

5.2.1.6. We noted that no withdrawals were made from the ACM Gold trading accounts by Mr Davids.

5.2.1.7. We further noted that ACM Gold made payments amounting to R23,541,302.00 to Mr Davids (refer to **paragraph 5.1.9.7**). Mr Davids informed us that these payments primarily relate to rebates on the monthly volume of trades conducted by Mr Davids and by clients referred to ACM Gold by Mr Davids.

5.2.1.8. Mr Davids further informed us that the amount of R23,541,302.00 included commission payments based on monthly deposits made by Mr Davids.

5.2.1.9. We have not reviewed the rebate and commission statements from ACM Gold and accordingly have not quantified the split between rebates and commissions earned.

#### 5.2.2. *Trading performance of Mr Davids*

5.2.2.1. We noted that Mr Davids continually traded (using forex broker ACM Gold) over the period 18 March 2014 to 23 July 2015.

5.2.2.2. Trading profits of approximately USD 21,009,277.65 (R242,867,250.00<sup>9</sup> at the average forex rate for the year) and trading losses of approximately USD 27,440,582.90 (R317,213,138.00 at the average forex rate for the year) were made over this period.

5.2.2.3. In this regard a net trading loss of USD 6,431,305.25 (USD 27,009,277.65 – USD 21,009,277.65) was generated over the period 18 March 2014 to 23 July 2015 (approximately R74,345,888.69).

5.2.2.4. We noted that a net profit was achieved in only four of the 17 months (measured at month end, excluding deposits made into trading accounts) of trading according to the statements of the ACM Gold trading accounts.

<sup>9</sup> USD/ZAR average rate used between 18 March 2014 and 23 July 2015  $[(12.4166+10.7047) / 2 = R11.56]$  (source: *Oanda.com*)

5.2.2.5. Refer to the table below as well as schedule<sup>10</sup> attached for a monthly summary of the deposits made and profit and losses (total monthly movement) as per the ACM Gold trading accounts from 18 March 2014 to 31 July 2015:

**Table 10: Monthly Summary of the ACM Gold Trading Account**

Date	Deposits (USD)	Losses (USD)	Profits (USD)	Total (USD)
31 March 2014	9,237.52	(9,052.93)	4,992.17	5,176.76
30 April 2014	9,420.35	(10,897.01)	13,759.50	12,282.84
31 May 2014	98,385.43	(70,995.00)	114,732.85	142,123.28
30 June 2014	23,452.15	(266,131.29)	110,519.22	(132,159.92)
31 July 2014	250,229.66	(224,436.99)	65,259.98	91,052.65
30 August 2014	278,629.32	(433,719.73)	89,477.65	(65,612.76)
30 September 2014	182,361.43	(194,738.70)	60,245.73	47,868.46
31 October 2014	358,417.21	(217,748.01)	255,332.47	396,001.67
30 November 2014	-	(780,198.18)	284,639.54	(495,558.64)
31 December 2014	89,677.14	(173,191.47)	92,026.86	8,512.53
31 January 2015	352,913.61	(333,478.35)	90,444.93	109,880.19
28 February 2015	341,590.97	(907,431.40)	232,189.19	(333,651.24)
31 March 2015	1,116,023.09	(353,676.72)	3,053,552.96	3,815,899.33
30 April 2015	593,692.05	(7,440,135.72)	4,858,181.46	(1,988,262.21)
31 May 2015	-	(11,074,368.39)	9,872,417.57	(1,201,950.82)
30 June 2015	2,067,048.01	(3,847,685.42)	1,452,127.57	(328,509.84)
31 July 2015	724,059.91	(1,102,697.59)	359,378.00	(19,259.68)
<b>Grand Total</b>	<b>6,495,137.85</b>	<b>(27,440,582.90)</b>	<b>21,009,277.65</b>	<b>63,832.60</b>

5.2.2.6. We noted a significant increase in trading activities during March 2015. At 28 February 2015 we noted that the ACM Gold trading accounts indicated a negative balance of USD 333,651.24. During March 2015 Mr Davids transferred deposits amounting to USD 1,116,023.09 to the trading accounts and generated a net profit

<sup>10</sup> Annexure 7: ACM Gold Monthly Profit and Loss

of USD 2,699,876.24 (USD 3,053,552.96 – USD 353,676.72) for the month of March 2015.

- 5.2.2.7. In this regard, Mr Davids generated a net profit of USD 2,699,876.24 (approximately R32,623,415.00) from a net investment of USD 782,371.85 (USD 1,116,023.00 – USD 333,651.00) in the month of March 2015 representing a 345% growth.
- 5.2.2.8. According to the trading accounts the net profit of USD 2,699,876.24<sup>11</sup> was subsequently lost through trading in April 2015 to 31 July 2015.
- 5.2.2.9. Mr Davids informed us that his trading methodology was based on future income projections and a trade-plan<sup>12</sup> which indicated that if he had more time to trade that he would have been able to generate sufficient funds to repay all lenders and sustain the business.
- 5.2.2.10. Mr Davids further provided us with his calculations<sup>13</sup> (named “*PFG position*”) on which he based his view of PFG’s trading performance.
- 5.2.2.11. We have not been able to successfully reconcile the balances used in Mr Davids’ calculations to the information according to the ACM Gold trade accounts and the lender database. We note however that Mr Davids’ calculations do not recognise the actual liability to lenders as per the lender database.
- 5.2.2.12. In this regard it is our view that Mr Davids’ calculations are materially misstated.
- 5.2.2.13. We note that *paragraph 136* of the EY Report sets out the trading accounts of ACM Gold from March 2014 to July 2015 in the form of a table. The table does not make reference to any profits earned but only indicates “Trade losses” of USD 6,431,305.25. The trade accounts of ACM Gold set profits and losses earned which resulted in a net loss of USD 6,431,305.25.
- 5.2.2.14. We do however agree with EY’s findings in that only USD 63,832.60 remained in the trading account as at the end of July 2015 i.e. the majority of deposits made to ACM Gold were lost through trading.

<sup>11</sup> USD/ZAR closing rate for the 24-hour period ending 31 March, 2015 – R12.0833 (source: *Oanda.com*)

<sup>12</sup> **Exhibit 2:** Trade-plan of Mr Davids

<sup>13</sup> **Exhibit 3:** Supporting Calculations of Trade-plan of Mr Davids



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## 5.3. Loan Analysis

### 5.3.1. Lender database

- 5.3.1.1. Mr Davids and Mr Bull provided us with a copy of the financial system named “PDF\_Email Jul 2015 ORG” (hereafter referred to as “the database” or the “lender database”) that was used to keep record of lenders, deposits, withdrawals, interest earned etc. The database contains the information of 1,875 lenders.
- 5.3.1.2. The information in this database was also used to prepare monthly electronic statements that were sent to lenders.
- 5.3.1.3. The system is essentially a Microsoft Excel database programmed by Mr Bull according to the required functionality of adding interest to lenders’ accounts, allocating all deposits and withdrawals etc.
- 5.3.1.4. Mr Bull informed us that he created the database during 2012 on the same basis as the previous system put in place by Mr Herrendoerfer in order to prepare monthly statements to lenders more efficiently.
- 5.3.1.5. We set out below a summary of the monthly process followed in order to issue statements to lenders as explained by Mr Bull:
- 5.3.1.5.1. a PFG employee captures all deposits and withdrawals from the bank statements on the database and allocates the transaction to each lender’s account;
  - 5.3.1.5.2. Mr Davids provides Mr Bull with the monthly interest percentages to apply to the lender’s accounts;
  - 5.3.1.5.3. Mr Bull then applies the interest rates provided to the loan balances of each lender on a compound interest basis;
  - 5.3.1.5.4. every lender who loaned an amount higher than R250,000.00 to PFG was allowed to receive 50% of the interest as a withdrawal each month. When a lender requested a withdrawal, Mr Bull calculated the maximum amount allowed to be paid out before authorising payment to the lender i.e. 50% of interest earned from the month; and
  - 5.3.1.5.5. statements are then automatically prepared and sent to each lender at the end of the month from the information captured to each lender’s account.

A spreadsheet is saved for every month of the year. Every month the additional information is added to the database. We were provided with every month since July 2012 when the system was implemented. Our analysis was based on the spreadsheet of July 2015 as this was the last month of trade available and all historical information and balances are contained within this spreadsheet.

5.3.1.6. Mr Bull informed us that during the 2014 year Mr Davids requested that the interest calculation should be changed from the compound interest method to the simple interest method. Mr Bull affected the changes but due to lenders' complaints, Mr Davids requested Mr Bull to change the system to the compound interest method again.

5.3.1.7. Refer to the table below for a summary of the transactions as per the database as at 31 July 2015:

**Table 11: Summary of transactions per database**

Description	2012 (ZAR)	2013 (ZAR)	2014 (ZAR)	2015 (ZAR)	Total (ZAR)
ACM Gold Transfer Out	-	-	(158,982.37)	(186,224.90)	(345,207.27)
Bonus Account Adjustment	-	6,870.00	-	-	6,870.00
Express Bonus	-	-	17,150.00	-	17,150.00
Referral Bonus	19,000.00	278,930.19	849 605,25	1,564,120.33	2,711,655.77
Transaction Bonus	262,579.27	483,500.00	3,292,000.00	(30,000.00)	4,008,079.27
Close Account Repayment	-	(298,248.86)	(662,249.18)	-	(960,498.04)
Close Account Ledger Correction	-	-	(4,181.39)	-	(4,181.39)
Close Account Transfer	(795,896.29)	(91,140.90)	-	-	(887,037.19)
Loan Payment (INT)	7,124,249.75	34,584,927.77	121,586,573.39	154,607,800.50	317,903,551.41

Effect of Early Repayment	(58,600.30)	(32,590.18)	(43,396.02)	-	(134,86.50)
Effect of Emergency Fund Repayment	-	-	(2,000.00)	-	(2,000.00)
EXT	29,932.93	124,142.73	-	-	154,075.66
Loan Return	5,912,826.08	31,571,074.35	122,221,299.98	158,732,424.36	318,437,624.77
Interest Correction	-	1,829.75	4,657.55	-	6,487.30
Internal Transfer In	-	13,000.00	-	-	13,000.00
Internal Transfer	-	(10,000.00)	-	-	(10,000.00)
Internal Transfer In	-	273,698.33	3,168,433.88	8,147,419.42	11,589,551.63
Internal Transfer Out	-	(274,505.38)	(3,188,460.88)	(8 144 419,42)	(11,607,385.68)
Ledger Correction	30,000.00	-	70,788.20	121,957.56	222,745.76
Account Transfer	795,896.29	10,000.00	-	-	805,896.29
Pre-earned Trading Profit	(1,399.45)	-	-	-	(1,399.45)
Internal Transfer In (Deceased Estate)	-	-	-	1,106,147.03	1,106,147.03
Internal Transfer Out (Deceased Estate)	-	-	-	(1,106,147.03)	(1,106,147.03)
Repayment	(2,475,435.10)	(11,969,433.52)	(46,219,681.82)	(62,933,192.68)	(123,597,743.13 )
<b>Sub-Total</b>	<b>10,843,153.18</b>	<b>54,672,054.27</b>	<b>200,931,556.58</b>	<b>251,879,885.16</b>	<b>518,326,649.00</b>

Opening balances <sup>a</sup>					13,725,654.00
Total					532,052,330.00
Balances as per "Balance table" <sup>b</sup>					530,764,175.00
Difference <sup>b</sup>					1,288,155.00

<sup>a</sup> Refer to **paragraph 5.3.1.9**

<sup>b</sup> Refer to **paragraph 5.3.1.10**

- 5.3.1.8. We noted that the transactions as per the table above resulted in a liability to lenders of R518,326,649.20 at 31 July 2015.
- 5.3.1.9. We further noted that the database contained a list of opening balances as at 30 June 2012 when Mr Bull developed the new system. These balances had to be carried over to the lenders' accounts. In this regard the total liability amounts to R532,052,330.00.
- 5.3.1.10. A separate module in the database indicated that the closing balances for each lender amounted to R530,765,175.00 in total resulting in a difference between the two tables of approximately R1,288,155.00. We have not been able to determine the reason for the difference. The difference is 0.24% of the total of R530,765,175.00 therefore the difference was not deemed material for investigation purposes.
- 5.3.1.11. According to the database PFG capitalised interest to lenders accounts amounting to approximately R318,437,624.00 over the five-year period ending on 31 July 2015. The interest accrued is indicated as "*Loan return*" in the database.
- 5.3.1.12. We noted that the interest allocated each month was also stated in the database. Based on these interest rates, the average interest rate for the relevant financial years are as follows:

**Table 12: Average Interest Allocated to Lenders**

Financial Year	Percentage Per Month(%)	Percentage Per Year (%)
2013 Financial Year (1 July 2012 to 28 February 2013)	4.6223%	55.4675%
2014 Financial Year	4.5991%	55.1898%
2015 Financial Year	5.4389%	65.2670%
2015 Financial Year (1 March 2015 to 31 July 2015)	5.0516%	60.6198%
<b>Overall average for entire period</b>	<b>5.0898%</b>	<b>61.0779%</b>
Period from 1 March 2015 to 15 May 2015	5.0182%	60.2184%

The average interest rate was calculated with the use of the “average” function in Microsoft Excel for the periods noted above.

5.3.1.13. We further noted that according to the database deposits of R317,903,551.00 (indicated as “*Loan payment*”) was deposited and R123,597,743.00 had been repaid to lenders. The repayment to lenders included interest repayments as mentioned in **paragraph 5.3.1.5.4** herein above.

5.3.1.14. The database also indicates that referral bonuses accrued to the accounts of certain lenders. The database depicts that a total amount of R2,711,655.77 has been allocated to lenders (indicated as “*Referral bonus*” in the table above”).

5.3.1.15. In this regard Mr Herrendoerfer and Mr Bull informed us that referral bonuses were allocated to lenders’ accounts where they referred new lenders to PFG.

## 5.3.2. Recalculation of interest on a simple interest basis

5.3.2.1. Mr Davids informed us that Mr Bull incorrectly calculated compounded interest instead of calculating interest on the simple interest method.

5.3.2.2. In this regard Mr Bull informed us that it was always the intention of PFG to calculate interest on a compound method and statements were sent to lenders based on interest calculated accordingly.

5.3.2.3. We recalculated the interest payable to lenders on a simple interest method based on the lender database information provided to us. According to our calculation the interest accumulated to R159,575,525.00 as at 31 July 2015.

*Due to volume, the calculation could not be attached but the methodology used to calculate was as follows:*

- (a) We obtained the opening balances as at July 2012 (from "BALANCE\_BACKUP" of July 2015) as well as the transactions for the years from 1 July 2012 to end July 2015 (from "TRAN\_BACKUP" and "TranTable" of July 2015). The opening balances were included as "OB" on the client database.*
- (b) The transaction information as obtained above details the interest percentage allocated to clients for each month.*
- (c) We calculated the capital balance of each client based on the transactions occurred (deposits, withdrawals, transfers etc.) excluding any interest.*
- (d) Aforementioned capital balances were utilised to calculate interest each month for each client. Interest was not compounded and not capitalised to the balance.*

5.3.2.4. In this regard, the overall simple interest accrued to lenders was R158,862,099.00 less than the interest calculated on a compound method.

5.3.2.5. We note however that the database developed by Mr Bull was the only financial system used by PFG and that electronic statements were sent to lenders based on the database information. In this regard it is our view that the interest calculated according to the database is the actual interest accrued to lenders.

5.3.2.6. There is no evidence to support that the simple interest calculation represents the actual interest accrued to lenders.

5.3.2.7. It should further be noted that the interest calculated on both methods i.e. compound interest and simple interest methods, is substantially more than income generated by the forex trading as indicated in **paragraph 5.2** above.

### 5.3.3. Lenders loan balances as at 15 May 2015

5.3.3.1. In order to compare the database information to the financial statements and/or management accounts of PFG as at 15 May 2015, we compiled a summary of the database as at 15 May 2015 on both a compound and simple interest basis. Refer to the table below:

**Table 13: Summary of the Database as at 15 May 2015**

Transactions (To date 15 May 2015)	Compound interest	Simple interest
Opening balances 1 July 2012 and 1 August 2012 (upon change over to new "PDF_EMAIL" system)	13,764,856.00	13,764,856.00
Additional loans (deposits)	261,245,059.00	261,245,059.00
Repayments (withdrawals)	(99,144,079.00)	(99,144,079.00)
Other transactions	5,072,794.00	5,072,794.00
Interest	236,657,886.00	123,524,605.00
<b>Closing balances</b>	<b>417,596,514.00</b>	<b>304,463,234.00</b>

5.3.3.2. Refer to **paragraph 5.4** below for our detailed work on the financial statements and/or management accounts in this regard.

### 5.4. Independently Reviewed AFS and interviews with Mr Nappies and Mr Manuel

5.4.1. Mr Davids presented us with copies of PFG's annual financial statements for the years 28 February 2012 to 28 February 2015 and management accounts for the period ending 15 May 2015:

5.4.1.1. AFS for the financial year 2012<sup>14</sup>

5.4.1.2. AFS for the financial year 2013<sup>15</sup>

5.4.1.3. AFS for the financial year 2014<sup>16</sup>

5.4.1.4. AFS for the financial year 2015<sup>17</sup>

5.4.1.5. Management Statements for the period ending 15 May 2015<sup>18</sup>

<sup>14</sup> **Exhibit 4:** Financial Statements for the financial year end 28 February 2012

<sup>15</sup> **Exhibit 5:** Financial Statements for the financial year end 28 February 2013

<sup>16</sup> **Exhibit 6:** Financial Statements for the financial year end 28 February 2014

<sup>17</sup> **Exhibit 7:** Financial Statements for the financial year end 28 February 2015

- 5.4.2. We noted that the financial statements were prepared and compiled by Mr Nappies and that the management statements dated 15 May 2015 were also independently reviewed by Mr Manuel.
- 5.4.3. Mr Davids informed us that the financial statements were prepared and signed off by external auditors. We note however that neither Mr Nappies nor Mr Manuel is registered chartered accountants with SAICA or registered auditors with IRBA.
- 5.4.4. Professional Qualifications of Mr Nappies and Mr Manuel:
- 5.4.4.1. Mr Nappies is registered with the following professional bodies:
- 5.4.4.1.1. The South African Institute of Tax Professionals;
  - 5.4.4.1.2. A full member of SAIPA; and
  - 5.4.4.1.3. A SAIPA Certified Independent Reviewer.
- 5.4.4.2. Mr Manuel is registered with the following professional bodies:
- 5.4.4.2.1. The South African Institute of Tax Professionals;
  - 5.4.4.2.2. A SAIPA Certified Independent Reviewer; and
  - 5.4.4.2.3. The Institute of Accounting and Commerce as a Financial Accountant in Practice.
- 5.4.4.3. The registration with the South African Institute of Tax Professionals is not relevant for the purposes of this investigation.
- 5.4.4.4. A member of SAIPA may provide the following services:
- 5.4.4.4.1. Accounting Officer for a close corporation, as described in section 62 (1) of the Close Corporation Act can perform the following duties:
    - 5.4.4.4.1.1. Determine whether the annual financial statements are in agreement with the accounting records of the corporation;
    - 5.4.4.4.1.2. Review the appropriateness of the accounting policies represented to the accounting officer as having been applied to the preparation of the annual financial statements; and

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<sup>18</sup> Exhibit 8: Management Statements for period ending 15 May 2015



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- 5.4.4.4.1.3. Report on the above two mentioned areas.
- 5.4.4.4.2. Report on any contraventions of the Close Corporation Act and/or the Companies Act.
- 5.4.4.4.3. A Professional Accountant is generally expected to report to the client in respect of the nature and extent of the work that has been done and the results of such work. The report concerned is factual in nature and should not be confused with an attestation or assurance report of a Registered Auditor. The report does not express an opinion.
- 5.4.4.4.4. Only Registered Auditors may provide reporting services that fall within the ambit of the International Regulatory Board of Auditors and its legislation.
- 5.4.4.5. A SAIPA Certified Independent Reviewer may review annual financial statements in instances where the PIS is less than 100. Based on the PIS calculations performed<sup>19</sup> PFG was required to be independently reviewed from February 2011.
- 5.4.4.6. The key duties and responsibilities of a Financial Accountant in Practice are to:
- 5.4.4.6.1. prepare and sign off Financial Statements for Close Corporations and Companies who's PIS score is under 100 or is owner managed; and
- 5.4.4.6.2. do an independent compilation or review of Annual Financial Statement for Companies and Incorporates who's PIS score is under 100.
- 5.4.4.7. The PIS for 15 May 2015 based on the management statements exceeded 350, and therefore required to be audited. As the financial information reviewed as at 15 May 2015 is however management statements for a 2.5 month period and not AFS, it was not required to be audited by a Registered Auditor. It should however be noted that PFG's AFS would have been required to be audited in the future.
- 5.4.4.8. The Accounting officer's duties in respect of the accounting records of a close corporation are:
- 5.4.4.8.1. Not to maintain the accounting records as that is the responsibility of the close corporation;

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<sup>19</sup> Annexure 8: PIS Calculations for the financial periods 28 February 2011 – 15 May 2015

- 5.4.4.8.2. If the accounting officer is charged with the duty of keeping the accounting records it is essential that such a duty be properly defined and contained in a letter of engagement, so that there can be no doubt as to who is responsible for the maintenance of the accounting records; and
- 5.4.4.8.3. The members of a close corporation are responsible for the preparation of annual financial statements. As with the accounting records, the members may appoint a person to perform this duty on their behalf.
- 5.4.5. It should be noted that the EY Report does not make reference to an analysis of the financial statements of PFG and therefore we have not reviewed any findings of EY in this regard.

5.4.6. **Statement of Financial Positions of PFG**

- 5.4.6.1. For the purpose of our report we focused our investigation on the closing balances of the most recent statement of financial position dated 15 May 2015. Refer to the table below for a copy of the statement of financial positions:

**Table 14: PFG Statement of Financial Position**

Description	15 May 2015 (ZAR)	28 February 2015 (ZAR)
<b>Non-Current Assets</b>		
Property, plant and equipment	54,039	62,540
Loans receivable	7,012,343	7,012,343
Loan to member	9,158,654	8,438,447
	<b>16,225,037</b>	<b>15,513,330</b>
<b>Current Assets</b>		
Trade deposits	119,092,615	41,483,572
Trade and other receivables	34,110	34,110
Cash and Cash Equivalents	78,624,079	56,351,665
	<b>197,750,804</b>	<b>97,869,346</b>

<b>Total assets</b>	<b>213,975,840</b>	<b>113,382,676</b>
<b>Equity and liabilities</b>		
<b>Equity</b>		
Member's contribution	100	100
Retained earnings/(accumulated loss)	27,245,294	(35,656,457)
	<b>27,245,394</b>	<b>(35,656,357)</b>
<b>Non-current liabilities</b>		
Borrowings	<b>182,207,970</b>	<b>141,347,262</b>
<b>Current Liabilities</b>		
Trade and other payables	54,151	42,151
Current taxation liability	1,287,028	1,287,027
Current portion of long term liabilities	3,181,297	6,362,593
	<b>4,522,476</b>	<b>7,691,771</b>
<b>Total Equity and Liabilities</b>	<b>213,975,840</b>	<b>113,382,676</b>

Aforementioned was also the management statements submitted to court by Mr Davids, annexed to his Affidavit deposited to on 22 July 2016 in support of the net asset position and profitability of PFG.

- 5.4.6.2. We noted that the Statement of Financial Position of PFG indicates a net asset value of R27,245,394.00 on 15 May 2015 i.e. total assets less total liabilities results in a positive equity value.
- 5.4.6.3. We further noted that expenses of a personal nature paid from the business accounts of PFG were allocated to the loan account of Mr Davids by Mr Nappies.
- 5.4.6.4. The loan account balance according to the Statement of Financial Position of Mr Davids amounts to a debit of R9,158,654.00 as at 15 May 2015. We have not tested the accuracy or completeness of the loan account.

5.4.6.5. We identified various discrepancies on the statement of financial position which will be further discussed in more detail below.

5.4.6.6. *Trade Deposits*

5.4.6.6.1. According to the statement of financial position the trade deposits of PFG amounted to R119,092,615.00 on 15 May 2015. The trade deposit account consisted of the two balances of the trading accounts held with ACM Gold.

5.4.6.6.2. We noted however that the trading closing balances of the two trading accounts amounted to USD 6,823,946.57 (R80,541,676.58) on 15 May 2015.

5.4.6.6.3. In this regard the trade deposit account was overstated by approximately R38,550,938.00 on 15 May 2015.

5.4.6.6.4. Refer to the table above for a summary of the differences between the trading accounts and the statement of financial position:

**Table 15: Summary of differences between the Trading Accounts and Statement of Financial Position**

Trade deposits	Closing balance (USD)	Amount (ZAR) <sup>20</sup>	Amount according to financial statements (ZAR)	Difference
ACM Gold: 5307060	4,580,874.35	54,067,143.78	72,306,709.00	18,239,565.00
ACM Gold: 5313261	2,243,072.22	26,474,532.80	46,785,906.00	20,311,373.00
<b>Total</b>	<b>6,823,946.57</b>	<b>80,541,676.58</b>	<b>119,092,615.00</b>	<b>38,550,938.00</b>

5.4.6.6.5. Mr Davids informed us that the balance is to be written off and were not able to provide us with a viable explanation for the discrepancy.

5.4.6.6.6. We noted that Mr Nappies posted a journal to the 28 February 2015 financial statements that resulted in a transfer of all closing balances

<sup>20</sup> USD/ZAR closing rate for the 24-hour period ending Friday, May 15, 2015 – R11.8028 (source: *Oanda.com*)

of other forex brokers to ACM Gold. The total amount transferred was R35,172,408.03.

5.4.6.6.7. Mr Nappies informed us that Mr Davids instructed him to transfer the closing balances of the other forex broker accounts to ACM Gold as the funds “*hedged*” to ACM Gold.

5.4.6.6.8. Mr Davids was not able to provide us with any documentation to support the journal posted by Mr Nappies.

5.4.6.6.9. In this regard it appears that the funds invested with other forex brokers could not be accounted for which resulted in an overstatement of trade deposits to an amount of R35,172,408.03 i.e. the majority of the total overstatement of R38,550,938.00 identified.

5.4.6.6.10. The remainder of the overstatement calculated by us may be the result of exchange rate differences.

5.4.6.7. *Long Term Liabilities (“Borrowings”) including Short Term Portion*

5.4.6.7.1. According to the statement of financial position the amount payable to lenders amounted to R185,389,267.00 consisting of a long term liability portion of R182,207,970.00 and a current liability portion of R3,181,297.00.

5.4.6.7.2. We note that the loans payable as per the lender database amounted to R417,596,514.00 as at 15 May 2015. Refer to work performed in *Lenders database* section in **paragraph 5.3** and **Table 13** above.

5.4.6.7.3. Mr Nappies informed us that the balance was based on prior year opening balances, new loans and loan repayments per the bank statement as well as average interest at 2% per month, service fees and system fees. Mr Nappies was not able to provide any detailed documentation to support the balance of R185,389,267.00 or an explanation for the variance to the lender database.

5.4.6.7.4. Mr Davids stated that the balance was not the real balance due to lenders and the interest allocated on the database was erroneously done on compound interest method instead of a simple interest method.

5.4.6.7.5. It is our view however that the lender database represents the actual balance due to lenders as this was the only financial system used by PFG and statements sent to clients were drawn from this database.

5.4.6.7.6. In this regard the statement of financial position is understated with approximately R232,207,247.00. (R417,596,514.00 – R185,389,267.00).

5.4.6.8. *Impact of discrepancies on the net asset value of PFG*

5.4.6.8.1. The discrepancies identified as set out above will have the following impact on the net asset value of PFG as at 15 May 2015:

**Table 16: Impact of discrepancies on the net asset value**

Description	Net asset value (ZAR)
Statement of financial position – 15 May 2015	27,245,394.00
Overstatement of trade deposits adjustment	(38,550,938.00)
Understatement of lenders loans adjustment	(232,207,247.00)
Revised Statement of financial position – 15 May 2015	<b>(243,512,791.00)</b>

5.4.6.8.2. As indicated in the table above, the identified discrepancies resulted in the positive net asset value position of PFG reducing from R27,245,394.00 to a negative net asset value position of R243,512,791.00 i.e. PFG's liabilities exceeded its assets with R243,512,791.00 as at 15 May 2015.

5.4.6.8.3. In this regard, it appears that PFG was insolvent at the period ending 15 May 2015 and 28 February 2015. It is our view that the financial statements and management statements of PFG have been materially misstated for the period ending 15 May 2015 and 28 February 2015.

5.4.6.8.4. It is not clear on what basis Mr Nappies compiled the financial statements and/or management accounts of PFG on a going concern basis.

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#### 5.4.7. Statement of Comprehensive Income

5.4.7.1. PFG's Statements of Comprehensive Income for periods 28 February 2011 to 15 May 2015 indicates a net profit before tax of R20,473,855.55<sup>21</sup>.

5.4.7.2. We set out below our findings in respect of our review of transaction balances directly related to the trading activities of PFG.

##### 5.4.7.3. *Gross forex profits and losses*

5.4.7.3.1. We noted that forex profits of R237,029,039.00 and forex losses of R189,663,476.35 were recorded over the period 1 March 2013 to 15 May 2015. In this regard a net forex profit of R47,365,563.00 (R237,029,039.00 – R189,663,476.35) in total was recognised by PFG since inception of the entity to 15 May 2015<sup>22</sup>

5.4.7.3.2. We further noted that R39,778,937.16 of the R47,365,563.00 (i.e. 84%) net forex profit recorded was journalised from the trading statements of forex broker ACM Gold by Mr Nappies and that Mr Nappies' recorded the transactions in accordance with the trading account statements of ACM Gold.

5.4.7.3.3. Mr Nappies used a standard R12.75 to USD1 conversion rate to convert the USD trading accounts to Rand on 28 February 2015 and 15 May 2015 which is higher than the closing rates (as per *www.oanda.com*) of R11.5778/1USD and R11.8501/1USD on those days respectively. In this regard the net forex profit of R47,365,563.00 may have been overstated due to the higher forex rate utilised.

5.4.7.3.4. It should be noted that on 18 May 2015 and thereafter PFG incurred significant forex losses which resulted in the loss of the majority of funds transferred to the ACM Gold trading accounts. Refer to **Annexure 7** for a summary of the profits and losses as per the ACM Gold trading account up to date 31 July 2015.

5.4.7.3.5. The financial statements further indicate that sales to the amount of R1,842,305.00 and "purchase forex exchange" to the amount of R1,744,004.75 was recorded over the periods 1 March 2010 to 28 February 2013. It appears that these transaction balances related to

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<sup>21</sup> **Annexure 9:** Summary of Statements of Comprehensive Income for periods 28 February 2011 – 15 May 2015

<sup>22</sup> **Annexure 10:** Summary of Forex Profits and Losses recorded in the Financial Statements for periods 1 March 2013 – 15 May 2015

forex profits and purchase and sale of trading software. We have not been provided with sufficient supporting documented to confirm these balances.

5.4.7.4. *Rebates received*

5.4.7.4.1. The Statement of Comprehensive Income indicates “*Rebates received*” in the amount of R20,272,193.00 that has been recorded over the period from 1 March 2010 to 15 May 2015.

5.4.7.4.2. Mr Davids informed us that the rebates were earned based on the number of “*trading lots*” per month with ACM Gold i.e. Mr Davids earned a volume rebate based on trading transactions.

5.4.7.4.3. We were not provided with statements from ACM Gold substantiating the R20,272,193.00 rebates received. Accordingly, we were not able to test the accuracy and completeness of the amount recognised.

5.4.7.4.4. We further noted that the amount of rebates recognised did not agree to the rebates and commissions received as per our bank statement analysis performed, namely R23,541,302.00.

5.4.7.5. *Finance cost*

5.4.7.5.1. The Statement of Comprehensive Income indicates that finance cost of R51,589,531.48 has been recorded over the period 1 March 2010 to 15 May 2015.

5.4.7.5.2. As discussed in our findings regarding lender loans in **paragraph 5.3** above, interest accrued to lenders at 15 May 2015 amounted to R236,657,886.00 in total.

5.4.7.5.3. Accordingly, finance cost has been understated with approximately R185,068,355.00 (R236,657,886.00 – R51,589,531.48) for the period from 1 March 2009 to 15 May 2015.

5.4.7.5.4. In the event that an adjustment is made for the finance cost to reflect the true position of the Statement of Comprehensive Income, the current net profit of R20,473,855.55 recognised at 15 May 2015 would amend to a loss of R164,594,500.00.



#### 5.4.8. Interview conducted and information obtained from Mr Manuel

5.4.8.1. On 18 January 2017 we met with Mr Manuel to discuss the procedures conducted by him during his review of the management statements of 15 May 2015.

5.4.8.2. The following pertinent information was noted during the interview:

5.4.8.2.1. Mr Manuel noted that he was contacted by Mr Davids and Mr Nappies who requested an independent review of the management statements for purposes of the pending court case against Mr Davids. Mr Manuel had three days in which the management statements had to be reviewed.

5.4.8.2.2. The independent review was signed off on 8 September 2015 and concluded that:

*“... nothing has come to my attention that causes me to believe that the annual financial statements of Platinum Forex CC are not prepared, in all material aspects, in accordance with the International Financial Reporting Standards for Small and Medium-sized Entities issued by the International Accounting Standards Board.”*

5.4.8.2.3. According to Mr Manuel the date of 15 May 2015 was chosen for the management statements as this was the date that SAPS came to PFG and seized documentation.

5.4.8.2.4. In order to conduct the review, Mr Nappies provided Mr Manuel with Excel schedules and further supporting documentation to peruse. Mr Manuel was also in constant contact with Mr Davids and Mr Nappies who assisted in explaining the business and the figures provided in the Management Accounts.

5.4.8.2.5. Mr Manuel stated that he could not recall all information provided to him during the time that the review was conducted and he could not recall specific procedures performed.

5.4.8.3. Per request of Mr Manuel, we sent him specific questions regarding the management statements and the procedures he conducted to reach his conclusion on 18 January 2017.

5.4.8.3.1. On 26 January 2017 Mr Manuel provided some feedback stating that Mr Davids would provide explanations for the trade deposits,

borrowings and finance costs. Mr Manuel did not explain what procedures were performed by himself in order to reach his conclusion.

5.4.8.3.2. On 27 January 2017, we requested further information from Mr Manuel.

Refer to aforementioned correspondence<sup>23</sup> attached hereto.

5.4.8.3.3. On 22 February 2017, Mr Manuel provided feedback and provided schedules to support certain balances. The information provided was similar to the information provided by Mr Nappies. We did not receive any further information regarding the discrepancies identified between the lender database and ACM Gold statements and the management statements.

Refer to aforementioned correspondence<sup>24</sup> attached hereto.

## 5.5. Interview with Mr Davids

5.5.1. Throughout the course of the investigation various discussions were held with Mr Davids to assist with explanations and information relating to the business of PFG. On 13 February 2017, we interviewed Mr Davids regarding the findings to date and provided him the opportunity to give comment thereon. We summarise below the views expressed by Mr Davids during such interview.

5.5.2. The business of PFG was, in the main, that of trading in foreign exchange for its own account.

5.5.2.1. Mr Davids was the sole trader for PFG.

5.5.3. The funds for the trading activities of the business emanated from the following main sources:

5.5.3.1. Sales of training courses in forex by PFG;

5.5.3.2. Sales of proprietary forex trading software developed by PFG;

5.5.3.3. Referral fees earned by PFG on its clients referred to forex brokers who wished to trade for their own accounts; and

5.5.3.4. Loans advanced to PFG from lenders in terms of a written loan agreements.

<sup>23</sup> Exhibit 9: Email Correspondence with Mr Manuel (1)

<sup>24</sup> Exhibit 10: Email Correspondence with Mr Manuel (2)

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- 5.5.4. The business of PFG was not a trading brokerage for its clients. Those clients that wished to trade forex for their own account were referred by PFG to its preferred trading brokerage, ACM Gold.
- 5.5.4.1. ACM Gold would pay a referral fee to PFG for each client referred to them.
- 5.5.5. No funds obtained from lenders were entrusted to PFG for investment purposes or for the purpose of trading on behalf of a lender. All loans advanced to PFG were for its own business purposes including, in the main, the trading in forex for its own account.
- 5.5.5.1. The loans, once received from the lender, became the funds of the PFG and were utilised by the business to trade, for its own account, in the forex markets.
- 5.5.5.2. *Refer to a copy of a template loan agreement<sup>25</sup> of PFG as **Exhibit 11** setting out the general terms and conditions of the loan. Such loan agreement is a generic copy of similar ones concluded with all lenders.*
- 5.5.6. The lending model of PFG identified two main groups of lenders being those that:
- 5.5.6.1. advanced funds of less than R250,000.00 (hereinafter referred to as “Category A” lenders); and
- 5.5.6.2. advanced R250,000.00 or more (hereinafter referred to as “Category B” lenders).
- 5.5.7. The loan agreement provided, in the main, for:
- 5.5.7.1. the loan and advance of capital for a minimum period of 12 months to PFG;
- 5.5.7.2. the payment of an agreed rate of interest by PFG to the lender; and
- 5.5.7.3. the draw-down of interest earned by certain lenders (i.e.: those that borrowed the business in excess of R250,000.00) during the term of the contract.
- 5.5.8. The rate of interest payable differed depending on whether a lender was a “Category A” or “Category B” lender. In the main, a:
- 5.5.8.1. “Category A” lenders could receive interest of between 2% and 4% per month; and
- 5.5.8.2. “Category B” lenders could receive interest of between 2% and 8% per month.
- 5.5.9. Interest payments to lenders would be funded from trading profits that PFG earned through its own trading activities.

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<sup>25</sup> **Exhibit 11:** Loan Agreement of PFG

5.5.10. The rate of interest that a lender would earn per month was dependant on the profitable trading of PFG. The rate of interest to be paid was determined by Mr Davids. The *modus operandi* for determining the interest payment was that Mr Davids would:

5.5.10.1. on or about the 28<sup>th</sup> of each month review the trading profits for that particular month. Mr Davids would, based on his own experience, expertise and assumptions determine the rate of interest to be paid to lenders on their loans; and

5.5.10.2. instruct Mr Bull to acknowledge the rate of interest earned on the monthly statements of the lenders depending on his [own] assumptions.

5.5.11. It was Mr Davids' understanding that all interest payable to lenders was calculated as simple interest on the loan amount. In or during 2014/2015, Mr Davids noticed that Mr Bull had calculated interest on the loan amounts as compound interest.

5.5.12. Mr Davids only reviewed the financial information of the PFG once the company accountants had drafted and submitted to him i.e. the financial statements and/or monthly management accounts. Mr Davids relied on the expertise of Mr Bull, the accountants and Mr Nappies to ensure all financials of the business were correct, including the rate of interest payable to the lenders.

5.5.13. It was the trading philosophy of Mr Davids that PFG did not commit 100% of its funds to trade in the forex market. Taking a conservative approach, PFG would commit only up to 50% of its funds. All things being equal, 50% of the total available funds of the business would be held in the PFG trading account and 50% of funds would be held in the business account.

5.5.13.1. Notwithstanding the trading philosophy aforementioned, any trading profits earned during in a particular month was not, at the month-end, transferred to the business account of PFG, but retained in the trading account and utilised for further trading activities.

5.5.13.2. In circumstances where a lender requested a draw-down on the interest that he/she had earned and/or in the event of a repayment of a loan at the end of the contract period, such payments would be made from the funds held in the business account.

*As mentioned herein above, PFG received approximately R329,183,079.00 from lenders (**paragraph 5.1.9.6**) of which R84,822,201.00 was paid to forex brokers (**paragraph 5.1.10.5**) and R49,530,639.00 invested in the Nedbank 30-day accounts (**paragraph 5.1.11.1.6**).*

5.5.14. It was good business practice for PFG to dispatch to each lender a monthly statement reflecting the loan amount made to PFG and the monthly interest he/she earned.

- 5.5.14.1. The lender statements reflecting the monthly interest earned was not, in the accounting sense, a credit interest earned but rather an acknowledgement to the lender of what interest he/she could have earned for that month.
- 5.5.14.1.1. *Our understanding of the aforementioned is that as per Mr Davids the accounting records of the PFG would not show the accounting of a credit of interest to a particular lender and the debit of the account of PFG. The statements sent to lenders was not an accounting generated statement reflecting an accounting transaction in the financial system of PFG, but rather a statement drawn up from Mr Bull's aforementioned system. As explained to us by Mr Davids, the true interest that a lender would receive would be finally calculated at the end of the loan period and that the interest set out in the monthly statements was simply illustrative.*
- 5.5.14.2. The inclusion of [illustrative] interest on a statement sent to a lender by PFG was not misleading or a misrepresentation as such interest would, at the end of the contract term have to be paid by PFG notwithstanding that, at the time of statement sent to the lender, such funds were not accounted for in the accounting records.
- 5.5.15. As an incentive, PFG paid all existing lenders a referral bonus for new lenders introduced to PFG. The referral bonus depended on the size of loans a new lender would advance to PFG. The referral bonus was capitalised to the lenders loan account on which the lender would also earn interest.
- 5.5.16. The internal business of PFG was not a concern for lenders. The terms of the relationship between PFG and its lenders was prescribed in the loan agreement.
- 5.5.16.1. PFG understood its obligations with each lender and was confident that it would be able to meet its commitments to pay each lender on the due date for payments.
- 5.5.16.2. The trading activity of PFG was not integrally linked to the borrowings in that such loans was not made available by the lender for the purpose of PFG trading on behalf of the lender.
- 5.5.17. As a member of PFG, Mr Davids drew a monthly amount of approximately R60,000.00. In addition, PFG loaned Mr Davids funds for purposes of, amongst other things, the purchase of the Plattekloof residential property.
- 5.5.18. Mr Davids agreed that the latest financial statements were prepared as at 15 May 2015 in order to demonstrate a favourable financial position of PFG.

*We noted that since 18 May 2015 the trading accounts of PFG held with ACM Gold showed a significant decline and at 23 July 2015 the majority of funds in the trading accounts were lost through trading.*

- 5.5.19. Mr Davids confirmed that the majority of funds transferred to forex brokers were lost through trading and that no trading profits were transferred to the business accounts of PFG in order to repay lenders.
- 5.5.20. Mr Davids is of the view however that he would have been able to generate all the profits required in order to settle the lender loans over a period of time. Mr Davids informed us that he would have been able to generate the profits over a longer period of time based on his forecasting and trading models.
- 5.5.21. Mr Davids was not able to provide us with a detailed explanation for the discrepancy between the financial statements dated 15 May 2015 and the trading accounts of ACM Gold. Mr Davids informed us that the overstatement of the trade deposits with an amount of approximately R38,550,938.00 in the financial statements should be written off as he was not able to provide us with supporting documentation to confirm the existence of the account balance.
- 5.5.22. In respect of the substantial understatement of loans (borrowings) in the financial statements dated 15 May 2015, Mr Davids informed us that the discrepancy of approximately R232,207,247.00 is the result Mr Bull's incorrect calculations of interest payable to lenders on a compound basis.
- 5.5.23. Mr Davids however confirmed that the database (financial system) used by Mr Bull for the last three years was the only database used by PFG and that lenders' statements were processed from the same data. Mr Davids also confirmed that he provided the monthly interest rates to Mr Bull.
- 5.5.24. In this regard Mr Davids informed us that during 2014/2015 he informed Mr Bull to change the interest calculation to a simple interest method and to correct lenders' statements. Mr Davids however confirmed that no correcting statements have been sent out to lenders to date.
- 5.5.25. Notwithstanding that the analysis of the financial position of PFG shows that it was factually and commercially insolvent and that it could not repay the borrowed funds and interest to its lenders, Mr Davids disputes the accuracy thereof. Mr Davids submits that but for the cessation of its business activities by the Hawks, its trading projections as devised by Mr Davids demonstrates that PFG was able to trade out its trading losses and have sufficient funds on hand to meet its obligations to each of its lenders as and when such obligations would fall due.

- 5.5.26. Mr Davids submits that notwithstanding the financial analysis showing that PFG had traded at a significant loss over the several years under review, that it had a trading plan which forecast future trading profits that would negate its suffered losses.
- 5.5.27. The business of PFG is not a Ponzi scheme. PFG has an underlying business of trading the forex markets. It enters into arm's length agreements with lenders who are informed of the nature of the loan requirements. There is no evidence to support the contention that monies paid out to any lender was done utilising the funds of another lender.
- 5.5.27.1. Lenders were aware of the risks in entering into commercial agreements and that if PFG was not able to repay monies due to such lender on the due date, arrangements could be made to pay back monies over an agreed term.
- 5.5.27.2. There is no evidence that PFG was unable to meet its financial obligations. Its obligations to repay loans and interest to lenders was the subject of terms of contract and not premised on its ability to repay lenders as at the date of the forced cessation of its business activities by the Hawks or upon a hypothetical case of an application for its liquidation.
- 5.5.28. PFG was/is not in breach of the Banks Act in that it did not accept deposits from clients but rather accepted monies loaned and advanced to it based on the terms of a loan agreement. PFG was in business for itself registered in terms of the provisions of the Close Corporations Act. The total member's interest in PFG is registered and held by Mr Davids.
- 5.5.29. Mr Davids denies that PFG acted in breach of the FAIS Act. It is Mr Davids contention that at all material times and following on from an enquiry made by the general public, PFG cooperated with the FSB investigators
- 5.5.29.1. Mr Davids answered to enquiries made by the FAIS as to its business informing them that it does not provide financial service, advice or act as an intermediary but rather that it trades in forex for its own account. Disclosure was made that its funds are raised by way of an arms-length transaction between the PFG and individual lender.
- 5.5.30. Mr Davids admits that certain marketing material, more especially on the PFG website was red-flagged by the FAIS as to potentially mislead the general public as to the nature and business of PFG. The website and noted marketing material was amended shortly thereafter as advised by the FAIS.
- 5.5.31. Mr Davids, following on a recommendation of Mr Nappies, engaged the FAIS personnel (Mr July) to determine whether in fact PFG should make application for registration for a license.

5.5.32. Despite several follow-up communications to Mr July, no further responses were received as to the aforementioned query save that in a final communication received from Mr July, he had indicated that the FAIS were closing their file. Mr Davids assumed that such notice meant that the FAIS were satisfied that PFG was not in breach of the FAIS Act or that it needed to apply for a license.

5.5.33. At no time did the FSB investigators give notice to Mr Davids and/or PFG to desist with its business. Save for its recommendations to amend certain wording on its website, there was no adverse findings about the business of PFG.

## 5.6. Interview with Mr Bull

5.6.1. On 16 November 2016, an interview was conducted with Mr Bull, the former IT director of PFG. The interview was conducted by Ms Viljoen and Ms Beck at the office of Mazars situated in Century City.

5.6.1.1. Mr Bull was the IT director of PFG.

5.6.1.2. Mr Herrendoerfer was the accounts manager of PFG. When Mr Herrendoerfer left the employ of PFG, Mr Bull took over the responsibility to maintain the client database, this included:

5.6.1.2.1. generating lenders' monthly statements;

5.6.1.2.2. managing payments made to clients; and

5.6.1.2.3. updating the system with the interest rates as determined by Mr Davids.

5.6.1.3. Based on the system of Mr Herrendoerfer, Mr Bull created a new database and client statement system for PFG during 2012. The database is in Microsoft Excel and maintained the following information:

5.6.1.3.1. the number of and details of the PFG clients;

5.6.1.3.2. the different types of clients;

5.6.1.3.3. transaction detail for each month; and

5.6.1.3.4. balances for each month etc.

5.6.1.4. The information recorded on the database was maintained by 3 ladies assisting with the capturing of the information from the bank statements.



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- 5.6.1.5. The interest was calculated separately by the database based upon the rates provided by Mr Davids.
- 5.6.1.6. Improvements to the code of the database created by Mr Bull, were made throughout the development and duration of the use of the system.
- 5.6.1.7. Mr Bull broadly explained that the category of the client was the determining factor for the interest charged on the account.
- 5.6.1.8. According to Mr Bull clients who lent over R250,000.00 received 7% per month on their accounts and clients who lent less than R250,000.00 received 4% per month. This was the two broader categories of clients. Further categories exist however these were the main categories.
- 5.6.1.9. Clients who opened trade accounts and wanted to trade themselves had the option of being linked with the PFG trade account. When clients linked their trading accounts to PFG's trade account the clients would receive a referral fee.
- 5.6.1.10. Mr Bull stated that clients could have had multiple trade accounts and further that if:
- 5.6.1.10.1. clients were to make use of a forex broker and open an account and trade themselves, no referral fee was received; and
  - 5.6.1.10.2. clients were to make use of a broker and link their trade account with PFG's trade account, a referral fee was received.
- 5.6.1.11. Mr Bull stated that as at May 2015 PFG had about 1,800 clients and about 900 clients being paid on a monthly basis. Initially there were not as many repayments to clients.
- 5.6.1.12. Monthly analysis of the trades was evident on the trading platform, however the main trade account was not provided to Mr Bull at any time.
- 5.6.1.13. Mr Bull explained that the "BRE" transaction type in the transaction table is used for Referral Bonuses. He further noted that these bonuses were received by clients when they referred new lenders to PFG. The referral bonus was often capitalised to the client account.
- 5.6.1.14. Mr Nappies kept and maintained the accounting records according to Mr Bull.

5.6.1.15. The monthly payments made to clients were made via Sage Pay, whereby clients' funds were transferred to Sage Pay and in turn Sage Pay will pay the clients on behalf of PFG.

5.6.2. Subsequent to the interview conducted with Mr Davids on 13 February 2017 an additional interview was conducted with Mr Bull on 14 February 2017 by Mr Snyman, Mr Gerber and Ms Beck at the residence of Mr Bull in Brooklyn. The interview was conducted in order to clarify Mr Davids instruction to Mr Bull to change the interest calculation to a simple interest method and to correct lenders' statements (refer **paragraph 5.5.24**). The following was noted in the interview:

5.6.2.1. Mr Gerber stated to Mr Bull that the interest rates levied on the accounts of the lenders as per the database maintained by Mr Bull were differing from the financial statements.

5.6.2.2. Mr Bull stated that when he started at PFG he was solely responsible for the IT operations of PFG and that he was not responsible for the statements that were sent to clients. The system created by Mr Herrendoerfer in or during 2012 was not easy to understand and therefore Mr Bull assisted in creating a system that was easier to understand and more efficient when communicating with clients.

5.6.2.3. Mr Bull made the following statements regarding the system that he developed for PFG:

5.6.2.3.1. the previous system took 2-3 weeks to produce lenders' statements;  
and

5.6.2.3.2. the system developed by Mr Bull was based on the manual system of Mr Herrendoerfer, and furthermore upon instruction from Mr Davids.

5.6.2.4. Mr Bull never informed the lenders that the interest charged to the accounts was compounded. Mr Bull did provide lenders with forecasts of the potential growth and according to Mr Bull that was used as a selling point to potential lenders.

5.6.2.5. Mr Davids noticed during 2014 that the interest being charged to the accounts of the clients was very high and that the interest should be changed from compounded interest to simple interest. Mr Bull discussed with Mr Davids that PFG should provide the clients a "heads up" of 6 months via a letter prior to changing the interest calculation from compounded to simple interest.

- 5.6.2.6. The decision to change from compounded interest to simple interest was discussed in a meeting in which Messrs Davids, Bull, Herrendoerfer and Bredenkamp were present. The meeting was held due to the interest “ballooning” and furthermore in order to meet the obligations of the outstanding loan accounts, it was necessary that the trading had to be increased in volume. More trades were required on a daily basis.
- 5.6.2.7. It was however decided to amend the system to rather calculate simple interest.
- 5.6.2.8. Following the system change a large number of lenders complained because of the reduced interest rate returns and lower than promised payments. Accordingly Mr Davids instructed Mr Bull to revert the interest method to compounded interest.
- 5.6.2.9. The coding in the Excel database developed by Mr Bull was overwritten when the change from compound to simple and back to compound was made and therefore there is no record of the changes made to the interest method.
- 5.6.2.10. Mr Bull clearly stated that he never provided any financial and/or lender information to Mr Nappies and that he never communicated with Mr Nappies. Mr Bull provided all information to Mr Davids who stated that he would provide relevant information to Mr Nappies.
- 5.6.2.11. The lender’s cash withdrawals recorded in the database were not capital withdrawals but were interest withdrawals. Mr Bull stated that if the withdrawals were capital withdrawals the interest expense would have decreased, however it is not evident from the database.
- 5.6.2.12. At the date of Mr Bull leaving PFG he confirmed to have estimated the total liability to be R450 million and not R180 million as communicated in the management statements as at 15 May 2015. Mr Bull reiterated that he was meticulous in ensuring the system and data was accurate.

## 5.7. Interview with Mr Herrendoerfer

- 5.7.1. On 17 February 2017, a telephonic interview was conducted with Mr Herrendoerfer, the former FD of PFG, by Mr Snyman, Mr Gerber and Ms Beck.

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- 5.7.2. Mr Herrendoerfer was appointed as the FD of PFG during late 2009. He resigned during 2015. His duties and responsibilities as explained by him were as follows:
- 5.7.2.1. creating statements which were sent to the clients of PFG indicating deposits and withdrawals made and the returns the lenders were generating; and
  - 5.7.2.2. liaising with clients and answering queries.
- 5.7.3. Mr Davids had access to the trading accounts of PFG and he would advise Mr Herrendoerfer of the percentage returns to allocate to the clients' accounts. Mr Herrendoerfer would record the percentage interest on the clients' accounts.
- 5.7.4. At inception the client records were maintained manually in Microsoft Excel and were very basic, per Mr Herrendoerfer. The clients were divided into two groups based upon their capital contributions of the loans. Higher percentage returns were allocated to clients with higher capital contributions.
- 5.7.5. Upon questioning how the interest was calculated Mr Herrendoerfer responded that compound interest was used in the calculation of the returns on the client accounts.
- 5.7.6. Mr Herrendoerfer confirmed that a meeting was conducted by Mr Davids whereby it was decided by Mr Davids that compound interest should no longer be charged on the clients' accounts, but rather simple interest. However following client complaints and queries, Mr Davids instructed to revert the interest method to compounded interest on client accounts.
- 5.7.7. The question was presented to Mr Herrendoerfer whether or not he was of the opinion that the interest rates charged to client accounts could be achieved. He responded that Mr Davids presented the information to all staff members to show the growth and the returns obtained and based upon the information presented, Mr Herrendoerfer believed that based on the growth in the trading accounts the interest rates were achievable.
- 5.7.8. In Mr Herrendoerfer's personal opinion he believed that based on the returns being allocated to the lender accounts the trading had to have been more aggressive in order to obtain the returns.
- 5.7.9. Mr Bull implemented an automated system to maintain the client records following the previous manual system. The upkeep of the system was maintained by Mr Herrendoerfer, Mr Bull and additional staff.
- 5.7.10. The opening balances from the previous manual system were manually transferred to the new system created by Mr Bull.

- 5.7.11. Mr Davids dealt exclusively with the bank statements and the staff did not have access to the statements.
- 5.7.12. Mr Herrendoerfer did communicate with Mr Nappies at times and provided him with information, however he cannot recall the information he provided to Mr Nappies.
- 5.7.13. Mr Herrendoerfer confirmed that the interest method for the majority of the period from 2009 to 2015 was compounded.

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**B INTERVIEWS CONDUCTED WITH PFG CLIENTS**

5.8. The below-mentioned clients of PFG were selected and interviewed. It was not possible to interview all clients of PFG given the number of such clients, available investigative resources and time allocated for the conduct of this investigation. The sample interviewees (below) were taken at random and represent a fair cross-section of the universe of clients of PFG.

We have sent affidavits to the various interviewees, however have not received all affidavits at date of this report. We have attached the unsigned draft affidavits in instances where signed copies were not available.

**5.9. Mr Spies**

5.9.1. On 8 December 2016 Mr Snyman and Mr Bosse conducted an interview with Mr Spies. We refer to the signed affidavit of Mr Spies<sup>26</sup>. We summarise, below, the material views of Mr Spies noted during our interview with him.

5.9.2. On or about November 2013, Mr Spies was told of PFG by a friend and, in particular, its business of trading in forex. According to the friend of Mr Spies, she had on earlier occasion invested money with PFG and in return was being paid attractive rates of return.

5.9.3. Mr Spies made enquiries at PFG and spoke directly with its Marketing Director, Mr Bredenkamp, who informed Mr Spies that PFG obtained loans from various clients and utilised such borrowed monies to trade in foreign exchange.

5.9.4. Mr Bredenkamp explained the business of PFG in broad terms and assuring him that with their expertise and experience in trading in the forex markets as well as the use of their specially designed trading tools, the company was able to generate profits on a regular basis.

5.9.5. Mr Bredenkamp confirmed that its finance model was to borrow money from clients for a determined period and which determined period the lender would receive a determined interest payment on the loan for the loan period.

5.9.6. Mr Spies understood that the lending model identified two basic categories of lenders being:

5.9.6.1. *Category "A"* lenders: Giving loans under R250,000.00 (two hundred and fifty thousand rand), the loan amount and interest thereon would only be paid to the lender at the end of the loan period; and

5.9.6.2. *Category "B"* lenders giving loans greater than R250,000.00 (two hundred and fifty thousand rand), the lender was entitled to receive up to 50% of the monthly interest

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<sup>26</sup> Exhibit 12: Affidavit of Mr Spies

earned on the loan amount and the balance of which would be capitalised into the loan account and made available to PFG as a further loan.

- 5.9.7. Mr Bredenkamp informed Mr Spies that depending on the lender category he could anticipate receiving payments of interest on his loan of anything between 2% and 8% per month.
- 5.9.8. Mr Spies entered into an agreement that he understood to be a loan agreement where after he lent and advanced PFG several amounts equal to an aggregate of R335,000.00.
- 5.9.9. On average, Mr Spies was earning interest on his loan equal to between 8% and 10% per month. By 19 November 2014, Spies had earned R245,583.97 in interest.

#### 5.10. Mr Jean-Pierre

- 5.10.1. On 14 December 2016 Mr Snyman and Mr Bosse conducted an interview with Mr Jean-Pierre. We refer to the signed affidavit of Mr Jean-Pierre<sup>27</sup>. We summarise, below, the material views of Mr Jean-Pierre noted during our interview with him.
- 5.10.2. Mr Jean-Pierre was introduced to the business of PFG through friends who were previous clients of PFG. The above-average rates of returns that they informed Mr Jean-Pierre they had earned caused him to enter into a loan agreement with PFG.
- 5.10.3. Initial enquiries to Mr Bredenkamp as to the nature of the business, confirmation of interest payments of at least 2% per month and that all loaned amounts were guaranteed, prompted Mr Jean-Pierre to make an initial loan of R100,000.00 towards the end of December 2013.
- 5.10.4. Subsequent loans were made to PFG over a period of two years totalling R4,000,000.00.
- 5.10.5. As a so-called category "B" lender, Mr Jean-Pierre was entitled to receive up to 50% of the monthly interest earned on his loan in cash, the balance of which was to be capitalised to his loan account and which capitalised interest amount was then made available to PFG as additional loan amounts.
- 5.10.6. PFG sent regular statements reflecting thereon that Mr Jean-Pierre was earning on average R100,000.00 per month interest on the total loan amount.

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<sup>27</sup> Exhibit 13: Affidavit of Mr Jean-Pierre

**5.11. Mr De Reiners**

- 5.11.1. On 14 December 2016 Mr Snyman and Mr Bosse conducted an interview with Mr De Reiners. We refer to the unsigned affidavit of Mr De Reiners<sup>28</sup>. We summarise, below, the material views of Mr De Reiners noted during our interview with him.
- 5.11.2. Mr De Reiners learnt of PFG from his [then] girlfriend in 2014 who informed him of her experiences with loans made to PFG and the above-average rates of return she enjoyed.
- 5.11.3. Mr De Reiners entered into a loan agreement with PFG and loaned and advanced it the sum of R10,000.00.
- 5.11.4. Mr De Reiners noted from the loan agreement that he would earn at least 4% per month on his investment made to PFG.

**5.12. Mr Coetzee**

- 5.12.1. On 14 December 2016 Mr Snyman and Mr Bosse conducted an interview with Mr Coetzee. We refer to the signed affidavit of Mr Coetzee<sup>29</sup>. We summarise, below, the material views of Mr Coetzee noted during our interview with him.
- 5.12.2. Mr Coetzee is the brother in law of Mr Bredenkamp who first introduced him to the business of PFG. Mr Bredenkamp explained the business of PFG and its funding model to Mr Coetzee. In particular, Mr Bredenkamp gave glowing views on the high rate of returns that could be earned by participants willing to lend PFG funds to trade in the forex markets.
- 5.12.3. Mr Bredenkamp informed Mr Coetzee that interest payments on loans advanced to PFG could be anything between 2%-8% per month and that all funds advanced was guaranteed and repayable to the lender at the end of the loan period.
- 5.12.4. Mr Coetzee concluded a loan agreement with PFG and lent and advanced it the sum of R320,000.00 over a period of 2 to 3 years.
- 5.12.5. During the period of the initial loan, PFG indicated on statements sent to Mr Coetzee that he was earning between 4% and 4.5% per month, which interest was being capitalised to his initial loan amount.
- 5.12.6. Impressed with the returns he was earning, Mr Coetzee encouraged his wife to loan capital to PFG, which she did in the amount of R1,200,000.00. As a category "B" lender, Mrs Coetzee was earning between 7% to 8% per month

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<sup>28</sup> **Exhibit 14:** Affidavit of Mr De Reiners

<sup>29</sup> **Exhibit 15:** Affidavit of Mr Coetzee



5.12.7. Mr Coetzee elected to apply for a draw-down payment of 50% of the monthly interest he earned. Draw-down payments of approximately R50,000.00 was paid to Mr Coetzee.

#### 5.13. Mr Rawoot

5.13.1. On 20 December 2016 Mr Snyman conducted an interview with Mr Rawoot. We refer to the unsigned affidavit of Mr Rawoot<sup>30</sup>. We summarise, below, the material views of Mr Rawoot noted during our interview with him.

5.13.2. In or during August 2013 Mr Rawoot was introduced to PFG by his sister in law, namely Ms Saydia Rawoot.

5.13.3. Ms Saydia Rawoot informed Mr Rawoot of an opportunity to earn very healthy returns on monies that he would lend to PFG and that his money and interest earned thereon was guaranteed to be repaid at the end of the loan period. Ms Saydia Rawoot informed Mr Rawoot that she had loaned monies to PFG and that she received interest of R 15000.00 a month.

5.13.4. Mr Rawoot requested Ms Saydia Rawoot to loan monies on his behalf to PFG.

5.13.5. On 5 September 2013 Mr Rawoot paid Ms Saydia Rawoot R 150,000.00 to loan to PFG. At the time Mr Rawoot did not understand the business of PFG and what happened with the monies Ms Saydia Rawoot loaned to PFG on his behalf.

5.13.6. Mr Rawoot only received a monthly letter and statement from Platinum Forex detailing loan he has made and the monthly interest he has earned.

5.13.7. Mr Rawoot earned between 4 and 5,75 % interest a month. Mr Rawoot never made any withdrawals from his account. According to the latest statement received from Platinum Forex, dated 30 April 2015 Mr Rawoot is owed R 350,377.00.

#### 5.14. Mr Hendricks

5.14.1. On 20 December 2016 Mr Snyman and Mr Bosse conducted an interview with Mr Hendricks. Mr Hendricks did not want to depose to an affidavit. We summarise below the material views of Mr Hendricks noted during our interview with him.

5.14.2. Mr Hendricks learnt of PFG from members of the Lighthouse Ministry who had loaned monies to the company and extolled on the high rates of return being earned.

5.14.3. Mr Hendricks contacted Mr Bredenkamp at PFG who informed Mr Hendricks of the business of PFG. Mr Bredenkamp marketed the company as a “billion-rand company” that was in a

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<sup>30</sup> Exhibit 16: Affidavit of Mr Rawoot

healthy financial position to be able to offer lenders rates of returns between 2% and 8% per month, depending on the loan amount advanced.

- 5.14.4. On 1 July 2014, Mr Hendricks entered into a loan agreement with PFG and advanced it the sum of R100,000.00. Within a month, the loan had earned 6.5% interest.
- 5.14.5. Boyed by the good rate of return, Mr Hendricks made further loans to PFG over the next year. By July 2015 Mr Hendricks had loaned and advanced to PFG the sum of R740,000.00.
- 5.14.6. From the monthly statements being received from PFG, it was recorded that the total loan was earning interest of between R25,000.00 to R30,000.00 per month which equated to between 6% and 6.5% per month.
- 5.14.7. Save for one occasion where Mr Hendricks applied and was given a draw-down on the interest in the sum of R40,000.00, Mr Hendricks did not withdraw any interest.

#### 5.15. **Mr Nkontshane**

- 5.15.1. On 20 December 2016 Mr Snyman and Mr Bosse conducted an interview with Mr Nkontshane. Mr Nkontshane did not want to depose to an affidavit. We summarise below the material views of Mr Nkontshane noted during our interview with him.
- 5.15.2. Mr Nkontshane learned of PFG from several sources and, intrigued in forex, made contact with Mr Bredenkamp in or about January 2014.
- 5.15.3. Mr Bredenkamp explained the business of PFG and that it looked to borrow monies from lenders that it in turned used to trade the forex markets.
- 5.15.4. Mr Bredenkamp presented Mr Nkontshane with a loan agreement in which he recalls a promise to pay at least 6% per month should he loan PFG an amount greater than R250,000.00. In the event of loans less than R250,000.00, the loan agreement promised to pay interest of approximately 4% per month. The agreement provided, further, that the redemption of the loan was fixed for a 12-month period.
- 5.15.5. Initially Mr Nkontshane loaned PFG the sum of R20,000.00. Within the first month, he received a statement reflecting that PFG allocated to him interest equal to 6%. This was more than he expected and, in consequence, provided PFG with a further loan of R470,000.00. All loans were derived from Mr Nkontshane's life savings.
- 5.15.6. Within a year of the cumulative loans being made, the monthly statements that were received from PFG showed that Mr Nkontshane was earning an average of R60,000.00 per month.

5.15.7. Mr Nkontshane requested from the outset that he draw down on the interest earned, which draw-down request was approved by PFG. Each month, PFG paid into his banking account the agreed draw-down amount of R20,000.00.

5.15.8. As at June 2015, the PFG statements reflected that on an initial investment of R490,000.00 and taking into account a monthly draw-down of R20,000.00. The capital and accrued interest due and repayable to Mr Nkontshane was R1,044,000.00.

#### 5.16. Mr Neville Davids

5.16.1. On 20 December 2016 Mr Snyman and Mr Bosse conducted an interview with Mr Neville Davids. We refer to the unsigned affidavit of Mr Neville Davids<sup>31</sup>. We summarise, below, the material views of Mr Neville Davids noted during our interview with him.

5.16.2. Mr Neville Davids was introduced to the business of PFG by his sister, Ms Carol Ann Dumas, who discussed the business of PFG and its trading in forex.

5.16.3. In communications with PFG and, in particular, with Mr Bredenkamp who explained the business of PFG and its borrowing model of funds from its clients against the payment of returns between 2%-5% per month.

5.16.4. Mr Bredenkamp explained that if Mr Neville Davids invests larger amounts of R250,000.00 or more (being a category "B" lender"), the rate of return would be anything between 5% and 10% per month.

5.16.5. Mr Neville Davids lent PFG the sum of R27,000.00 and earned a rate of return from the first month on the loan at an average interest rate of 4.25%.

5.16.6. The loan advanced was done subsequent to Mr Neville Davids and PFG concluding a loan agreement that was prepared for him by PFG and sent to him by Mr Bredenkamp.

#### 5.17. Mr Mahoty & The Shalimar Family Trust

5.17.1. On 21 December 2016 Mr Snyman and Mr Bosse conducted an interview with Mr Mahoty in his personal capacity and as representative of The Shalimar Family Trust. We refer to the unsigned affidavit of Mr Mahoty<sup>32</sup>. We summarise, below, the material views of Mr Mahoty noted during our interview with him.

5.17.2. Mr Mahoty came to learn of PFG via the internet and its website while browsing online for business opportunities.

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<sup>31</sup> Exhibit 17: Affidavit of Mr Neville Davids

<sup>32</sup> Exhibit 18: Affidavit of Mr Mahoty

- 5.17.3. On enquiries as to the business and its funding model, Mr Mahoty was advised that:
- 5.17.3.1. the company would use such funds and trade for the company's own accounts in the forex market;
  - 5.17.3.2. the company would pay him a rate of return of anything between 2% and 10% per month depending on the loan amount advanced to the company; and
  - 5.17.3.3. he could draw-down on the loan interest earned every month (as a category "B" lender) and that at the end of the loan period his capital and all accrued interest would be paid back to him.
- 5.17.4. Mr Mahoty entered into loan agreements with PFG with an anticipated rate of return of between 5%-10% per month.
- 5.17.5. In March 2014, Mr Mahoty lent and advanced the amount of R1,500,000.00 PFG.
- 5.17.6. From monthly statements received from PFG, Mr Mahoty was earning 5,5% per month on his loan.
- 5.17.7. Subsequent to the initial loans made, Mr Mahoty lent and advanced to PFG a further R2,500,000.00
- 5.17.8. On average, Mr Mahoty was enjoying a monthly interest payment of R69,000.00.
- 5.17.9. On one occasion, Mr Mahoty drew-down on the interest he earned and was paid R50,000.00 by PFG.
- 5.17.10. Due to the attractive rates of return that he was receiving on the loans, Mr Mahoty recommended to his fellow trustees of the Shalimar Family Trust to make similar loans with PFG.
- 5.17.11. The Shalimar Family Trust made payments to PFG in the amount of R4,500,000.00. From monthly statements received, The Shalimar Family Trust was earning on average R300,000.00 per month in interest and which equated to approximately 6.7% per month.

## 5.18. Mr Thompson

- 5.18.1. On 21 December 2017 Mr Snyman and Mr Bosse conducted an interview with Mr Thompson. We refer to the unsigned affidavit of Mr Thompson<sup>33</sup>. We summarise, below, the material views of Thompson noted during our interview with him.

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<sup>33</sup> Exhibit 19: Affidavit of Mr Thompson

- 5.18.2. Mr Thompson learnt of PFG through work colleagues. Following on initial enquiries about the business of PFG and conducting online research into the company, including reading the marketing material on its website, Mr Thompson request PFG to send him the loan agreements for signature.
- 5.18.3. Mr Thompson observed from the terms of the loan agreement PFG's obligation to pay interest on the loan of between 2% to 4% per month.
- 5.18.4. Mr Thompson advanced and paid to PFG the sum of R10,000.00. Shortly of making the loan, PFG sent Mr Thompson communication that the business was suspended from further conduct of its trading by the NPA and that such would resume shortly once the impasse had been cleared up with the relevant authorities.
- 5.18.5. Due to the short period of time passing between the advance of the loan and the suspension of the business as communicated by PFG, Mr Thompson received no statements from PFG and is unaware, at the time of deposing to the attached affidavit, what interest was earned on the loaned amount.

#### 5.19. Mr Cloete

- 5.19.1. On 11 January 2017 Mr Snyman and Mr Bosse conducted an interview with Mr Cloete. We refer to the signed affidavit of Mr Cloete<sup>34</sup>. We summarise, below, the material views of Mr Cloete noted during our interview with him.
- 5.19.2. Mr Cloete learnt of the business of PFG from general enquiries. An initial enquiry about the company was made where its business model and funding model were explained to Mr Cloete.
- 5.19.3. Mr Cloete was informed that PFG borrows money from clients for the purpose of trading on the forex markets for its own account. In return for the loan, the company would pay Mr Cloete an average rate of return of between 2% and 4% per month if he lent PFG at least R100,000.00. Alternatively, that he could earn between 5% and 10% per month if he loaned PFG funds over R250,000.00.
- 5.19.4. Mr Bredenkamp assured Mr Cloete that his funds were guaranteed, that it was trading lawfully and that the rates of return it was able to promise was possible due to its successful trading of forex.
- 5.19.5. Based on the assurances of PFG, the marketing material reviewed, including its website, Mr Cloete was persuaded to invest in the opportunity and did so by depositing R250,000,00 into PFG's banking account.

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<sup>34</sup> Exhibit 20: Affidavit of Mr Cloete

- 5.19.6. As a category "B" lender, Mr Cloete was assured by Mr Bredenkamp that he could anticipate a rate of return of between 5% and 10% per month.
- 5.19.7. In May and June 2015, statements received from PFG reflected interest earned on the loan amount of R8,000.00. Mr Cloete required the investment income and requested a draw-down of this interest to be paid into his banking account, which money was thereafter paid to him by PFG.
- 5.19.8. On or about June 2015, Mr Cloete received a letter from PFG to advise that its business had been temporarily closed and that the matter was receiving urgent attention and it would soon recommence the business. Assurance was given to Mr Cloete that his money was safe notwithstanding the closure of the business.

## 5.20. Mr Samuels

- 5.20.1. On 11 January 2017 Mr Snyman and Mr Bosse conducted an interview with Mr Samuels. We refer to the unsigned affidavit of Mr Samuels<sup>35</sup> and his wife, Ms Cheryl Samuels. We summarise, below, the material views of Mr Samuels noted during our interview with him.
- 5.20.2. Mr Samuels was introduced to PFG through his brother in law, Mr Bredenkamp.
- 5.20.3. Mr Bredenkamp explained the business model of PFG to Mr Samuels. PFG borrows money from clients in terms of a loan agreement. PFG uses the loaned funds to trade the forex markets. Due to their trading systems, platforms, experience and expertise PFG traded high profit margins.
- 5.20.4. Against a loan made to PFG, the company would pay to Mr Samuel an above average rate of return for the loan period.
- 5.20.5. On or about 14 November 2011, Mr Samuels lent and advanced to PFG the sum of R50,000.00. As a category A lender, Mr Samuels was given assurances of a rate of return of between 2% and 5% per month.
- 5.20.6. Subsequent to the initial loan, Mr Samuels loaned and advanced to PFG a further R250,000.00. As a result of this loan, Mr Samuels was deemed a category "B" lender who would earn, amongst other things, greater benefits such as a higher rate of return of between 5% and 10% per month.
- 5.20.7. From statements received by Mr Samuels from PFG, he noted that his loans were attracting interest as follows:

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<sup>35</sup> Exhibit 21: Affidavits of Mr Samuels and Ms Samuels

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5.20.7.1. Approximately 4% on the "*prime account*" and

5.20.7.2. Approximately 8% on the "*private account*"

5.20.8. As at 30 June 2015, the PFG statements received by Mr Samuels reflects the loans and interest due and payable to him as follows:

5.20.8.1. R4,589,760.63 on the "*private account*"; and

5.20.8.2. R329,508.23 on the "*prime account*"

5.20.9. Mr Samuels loaned several smaller amounts to PFG, such loans being made in the names of his children. Each loan advanced was equal to R10,000.00. As a category "A" lender, PFG informed Mr Samuels that they could anticipate a rate of return of between 2% and 5% per month.

5.20.10. Mr Samuels encouraged his wife to also involve herself with PFG. Mrs Samuels subsequently loaned and advanced to PFG an amount of R1,000,000.00.

5.20.11. In addition to the aforementioned loans, Mr Samuels set up his own trading account to trade the forex markets. PFG assisted him to set up the active trading account into which he deposited R28,000.00. The active trading account was opened under the trading platform managed by Easy Forex.

5.20.12. Due to personal time constraints, Mr Samuels requested PFG to also trade his active forex account. A few days after the authorisation, Mr Davids made contact with Mr Samuels to inform him that his active trading accounts had been wiped out and all money lost to forex trading.

5.20.13. Mr Samuels met with Mr Davis regarding the active trading account loss. Mr Samuels was assured by Mr Davids that the losses experienced were due to volatility. He presented Mr Samuels his trading platform and pointed out data from trading screens that PFG was making a lot of money.

5.20.14. Mr Davids assured Mr Samuels that all other funds he and his family had loaned to PFG was safe in that PFG was trading positively and was able to repay his capital and interest earned.

5.20.15. Shortly thereafter, Mr Samuels received a letter from PFG advising that its business had been suspended due to court action brought by the NPA.

5.21. It should be noted that the individuals interviewed were selected at random and therefore no comparison to the EY Report has been done in this regard as EY had not interviewed the same individuals.

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## C INTERPRETATION OF LEGISLATIVE FRAMEWORK

### 5.22. Banks Act

- 5.22.1. Section 11(1) of the Banks Act provides for the registration of a business as a bank. In particular, no person shall conduct the business of a bank unless such person is a public company and is registered as a bank in terms of the Banks Act.
- 5.22.2. PFG is a Close Corporation, registered as such, in terms of the Close Corporations Act. The sole member of PFG is Mr Davids. No records exist nor any application pending for the registration or conversion of PFG as a public company as defined in terms of the Companies Act.
- 5.22.3. No application in terms of section 11(2) of the Bank Act was submitted or is pending by PFG for authorisation to establish itself as a bank.
- 5.22.4. The business of a bank exempts activities of acceptance of deposits by a person who does not purport to accept such deposits on a regular basis and who has not advertised for or solicited such deposits, provided however that the person taking deposits shall not at any time hold deposits from more than 20 persons or deposits amounting in the aggregate of more than R500,000.00.
- 5.22.5. The evidence shows that the borrowing of funds from the general public was a regular feature of the business of PFG. The public became aware of PFG, in the main, by word of mouth but also by various marketing initiatives including sales pitches at training seminars, from the website of PFG and its social media pages.
- 5.22.6. It appears from the bank statements reviewed and from the interviews with the parties mentioned herein that PFG under the aegis of loan agreements accepted payments of loans into its accounts from multiple lenders, such lenders being members of the general public.
- 5.22.6.1. To avoid prolixity, we refer to the bank statements filed of record in these proceedings and beg that they be read as if incorporated into this report.
- 5.22.6.2. The loan agreements themselves appear to fall within the definition of “*commercial paper*” as set out in Bank Notice of 1997.
- 5.22.7. An analysis of the bank statements reflects that PFG regularly received payments into its business banking account from various lenders and in various amounts.
- 5.22.7.1. Financial records reflect that lenders depositing funds with PFG exceed the threshold of 20 persons as stipulated in the Bank Act and that funds deposited by such lender s exceeded more than the stipulated R500,000.00.



5.22.8. Mr Davids contends that its receipt of loans deposited by lenders into PFG's bank account does not breach the provisions of section 11(1) of the Banks Act, that it did not accept deposits as defined and that it did not carry on the business of a bank.

5.22.9. There is *prima facie* proof, and we accord with the findings of EY, that the activities of PFG in taking money from the public falls within the prescript of conducting a business of a bank. The following material facts give rise hereto:

5.22.9.1. analysis of the bank statements reflect various amounts of cash deposits accepted by over 20 people and that such deposits were accepted on a regular basis;

5.22.9.2. PFG used a multi-layers marketing campaign to entice lenders including online marketing, use of social media and the system of client "referrals";

5.22.9.3. there exist several acknowledgements of debts concluded with lenders that refer to them not as lenders but rather as investors;

5.22.9.4. the practice of naming lenders as "investors" was terminated only after rebuke by the Financial Services Board;

5.22.9.5. all funds received were recorded in the Excel spreadsheets of PFG in the name of the specific lenders [initially identified as investors]; and

5.22.9.6. all lenders would earn a monthly rate of interest and that against a withdrawal of funds prior to the termination date of the contract, a penalty would be incurred that the lender may forfeit his/her interest.

5.22.10. Based on the prescripts of the exemptions of the conducting of a business of a bank, there is no evidence that the entering into the loan agreements fell within the prescribed conditions to trigger the exemptions.

### 5.23. Consumer Protection Act

5.23.1. The evidence reviewed under investigation shows that PFG entered into agreements with members of the general public. The agreements, termed "loan agreements", provided for PFG to pay the lenders a rate of interest of between 24% and 96% per annum.

5.23.1.1. The aforementioned rate of interest is in breach of the provisions of section 43(3) of the CPA in that such rate of return was greater than 20 percent above the SARB REPO Rate from time to time. The REPO rate was the following over the years:

5.23.1.1.1. 2013 - 5.5%

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5.23.1.1.2. 2014 - 5.75%

5.23.1.1.3. 2015 - 6.25%

5.23.1.1.4. 2016 - 6.75%

Refer to **Table 12** herein above which details interest to lenders in excess of the aforementioned REPO rate.

- 5.23.2. The evidence shows that lenders paid monies into the banking account of PFG, which payments, in cash, constitute “consideration” as defined in section 1 of the CPA.
- 5.23.3. In addition to the aforementioned, the views expressed by Mr Davids that PFG paid referral bonuses to existing lenders against the introduction of new lenders falls within the provisions of section 43(4)(a) and (b) of the CPA. This referral bonus is substantiated in **Table 11** (above) reflecting the allocation of payments for so-called "referral" and "express" bonuses.
- 5.23.4. We concur with the EY Report that there is prima facie evidence of a breach of section 43 of the CPA and the creation and running of a multiplication and/or pyramid scheme.

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## 6. CONCLUSION

- 6.1. Against our independent investigation and the findings made herein, we considered the same in relation to the findings made in the EY Report.
- 6.2. Despite certain differences noted and commented in the forensic audit and investigation performed by us and considered against that in the EY report, there is *prima facie* evidence that:
- 6.2.1. deposits amounting to R329,192,579.00 were received from lenders as a regular feature of business according to the bank statements of PFG (refer **paragraph 5.1.9.6** and **Table 6**);
  - 6.2.2. the bank statements further indicated that repayments to an amount of R138,802,013.00 had been made to lenders (refer **paragraph 5.1.10.4** and **Table 6**);
  - 6.2.3. the trade accounts of ACM Gold confirm that no profits from trading were transferred to the business accounts of PFG and that at the end of July 2015 the majority of transfers to forex brokers were lost through trading. In addition, the net trading profits were only generated for four of the 17 months of trading with ACM Gold, and only one period indicated significant profits of approximately 345% of the invested capital (refer **paragraph 5.1.9.7** and **5.2.2.4**);
  - 6.2.4. rebates and commission paid to PFG by ACM Gold to an amount of R23,541,302.00 and bank interest earned of R2,404,754.34.00 were insignificant in comparison to the amount of deposits received from lenders (R329,192,579.00) and the corresponding liabilities to lenders in excess of R400 million as at 15 May 2015 (refer **paragraph 5.1.9.7** and **5.1.9.8** and **Table 4**);
  - 6.2.5. material misstatements identified in the financial statements of PFG in respect of the recognition of trade deposits, liabilities and finance cost indicates that PFG as at 15 May 2015 and for all periods before was insolvent (refer **paragraph 5.4.6.6**, **5.4.6.7** and **5.4.7.5**);
  - 6.2.6. the repayments to lenders had to be funded by using the deposits of new lenders as the income earned from trading activities by PFG were not able to sustain the repayments (refer **paragraph 5.2.2**, **5.3.1.13**, **5.3.1.8** and **5.5.13**);
- (In our view PFG were not able to meet its obligations to repay lenders in the event that lenders exercised their option to withdraw their funds, or to sustain the repayment of monthly interest's payable to lenders.)*
- 6.2.7. we agree with the findings of EY in that the deposits from lenders in the amount of R329,192,579.00 (R329,306,174.91.00 according to the EY report) were primarily used to sustain and fund the business activities of PFG i.e. the income earned from forex profits,

interest received and forex rebates and commissions was insufficient to fund repayment to lenders and the business expenses of PFG (refer **paragraph 5.1.9.6**);

6.2.8. PFG operated in breach of the CPA to the extent that it not only marketed and held itself able to pay out to lenders rates of return greater than that of the SARB REPO rate from time to time but, also, that it actively encouraged and offered to pay (and indeed credited the accounts of lenders) referral and express bonuses. With respect to the payment of express bonuses and/or any other amounts for referrals, the CPA deems it to be a “pyramid scheme” where such payments are the **primary** compensation to participants. The evidence considered by us reflects payments of such compensation but not necessarily as primary compensation. (Refer **paragraph 5.23**);

6.2.9. despite only one significant instance of profitable trade, PFG did not utilise such profits towards allocation for pay-out of interest to lenders and/or repayments of loans. When lenders were to be repaid and/or interest paid and/or referral bonuses paid, such funds came out of the business account which, in truth was monies loaned and advanced by various lenders (refer **paragraph 6.2.6 and 5.2.2**);

6.2.10. there was significant deposit taking by PFG from lenders in excess of the prescribed minimum of 20 individuals as per the Banks Act (read with the referred Notices). There is no evidence that the act of taking of deposits from the general public fell within the prescribed exemptions set out in the aforementioned notices (refer **paragraph 5.22**);

6.3. We express no conclusion of whether or not PFG was in breach of the FAIS Act, as the time provided to finalise this mandate did not allow us to investigate the matter. We record, however, that there is no evidence that investigators of the FSB found PFG to be in breach of the aforementioned act and, in particular, to be conducting business as a financial services provider or intermediary.

6.4. We express no conclusion of whether or not PFG was in breach of the POC Act as the time provided to finalise this mandate did not allow us to investigate the matter.

6.5. We therefore conclude that the evidence shows that PFG was:

6.5.1. in breach of the Bank's Act; and

6.5.2. in breach of the CPA.

Yours faithfully

**Christo Snyman, CFE**

**National Director**

**Mazars Forensic Services (Pty) Ltd**

