

NOTICE TO REGISTRANT TO COMPLY IN TERMS OF SECTION 55(1) OF THE NATIONAL CREDIT ACT, 2005 ("the Act")

NCR Form 13

Name of registrant

Rudco Finance Company (Pty) Ltd

Address

2nd Floor
The Strand Building
37 Strand Street
Cape Town
8000

Registration:

Temporary registration with National Credit Regulator ("NCR"), letter dated 6 March 2007 (NCR application No 4497).

A. In terms of section 55(1) and section 55(3) of the Act, your attention is drawn to the fact that you have failed to comply with the provisions of the Act, in that:

- i. Rudco Finance Company (Pty) Ltd ("Rudco Finance") demands that consumers make monthly payments in respect of various types of credit transactions, prior to the money having been advanced or paid over. This practice entails that repayments are being collected from consumers prior to Rudco Finance being entitled to collect repayments in respect of credit agreement in terms of the National Credit Act. Rudco Finance thus contravenes sections 100, 101, 103 and 105 of the Act and regulations 40 and 41 of the Regulations issued in terms of the Act ("regulations");
- ii. Rudco Finance charges monthly service fees ranging between R500 and R1,500 per month on credit agreements, which is in excess of the R50 per month as prescribed in terms of sections 101 and 105 of the Act and regulation 44;
- iii. Rudco Finance demands payment of monthly service fees prior to the money having been advanced or paid over and any amount having been deferred, and thus at a date earlier than the date on which such fees are due and payable, as prescribed in regulations 41 and 44;
- iv. Rudco Finance has not been able to provide to inspectors appointed by the National Credit Regulator, the basis of calculation of the interest rate, and has not been able to demonstrate that the interest rate advertised at 6%, is calculated in accordance with sections 101 and 103 of the Act and with regulations 40 and 41;
- v. Rudco Finance has failed to provide consumers with pre-agreement statements or quotations as required by the Act in terms of sections 92 and as prescribed in regulation 29;

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- vi. Rudco Finance does not deliver to the consumer a document that records their credit agreement as required by the Act and thus contravenes section 93 of the Act and Regulation 31;
- vii. The advertisements for the availability of credit which are placed by Rudco Finance, or placed by agents acting on behalf of Rudco Finance, or advertising using the name or products of Rudco Finance, contain statements that are misleading, fraudulent or deceptive and thereby contravene section 76(4) and section 77 of the Act and regulation 21. These advertisements contain statements in respect of credit to be provided, and in respect of the interest and fees charged on credit, which are misleading, fraudulent or deceptive. These advertisements further fail to disclose the information as required in the Act and as prescribed in regulation 21:

In particular, Rudco Finance, or persons acting on behalf of or using the name of Rudco Finance:-

- a. through advertisements, including e-mails and other methods, are soliciting consumers to enter into credit agreements;
 - b. where such credit agreements do not comply with the Act as indicated in (i) - (iii) above;
 - c. where such advertisements by referring only to an "interest rate at 6%", or only to the interest rate and monthly payments, do not contain the information as prescribed in regulation 21(3); and
 - d. where such advertisements do not disclose to consumers the full cost of the credit agreements being advertised.
- viii. Rudco Finance makes use of agents in the solicitation, completion or conclusion of credit agreements but does not comply with section 163 of the Act and with regulations 59 and 61, in that:
 - a. Rudco finance does not provide its agents with identification cards;
 - b. Rudco finance does not provide adequate and proper training to its agents; and
 - c. Rudco finance does not maintain a register of its agents in the prescribed manner and form.
 - ix. In respect of transactions concluded prior to 1 June 2007, Rudco Finance contravenes *inter alia* sections 2, 3, 4, 5 and 10 of the Usury Act, 1968 ("the Usury Act") by:
 - demanding from consumers monthly payments in respect of various types of credit transactions, prior to money being advanced or paid over to or on behalf of such consumers, therefore contravening the Usury Act and incorrectly applying the definition of principal debt;
 - charging monthly management fees in contravention of the Usury Act;
 - not disclosing the finance charges and the annual finance charge rate in the manner as prescribed by the Usury Act;
 - failing to provide to consumers a copy of the instrument of debt which meets the requirements of the Usury Act.

B. In terms of section 55(3) of the Act, you are required to take the following steps to address the non-compliance with the Act:

With immediate effect,

- i. cease the practice of demanding and accepting payments and/or service fees prior to having advanced an amount or having deferred an obligation in respect of a credit agreement;
- ii. cease the practice of charging monthly service fees in contravention of the Act and in excess of the limits imposed in the Regulations;
- iii. issue pre-agreement statements and quotes to all consumers who applied for credit since 1 June 2007 and who did not receive such documents, or who after the date of this notice apply for credit;
- iv. deliver to all consumers with whom credit agreements have been concluded since 1 June 2007, a copy of the document that records the credit agreement;
- v. provide details to the National Credit Regulator of the manner of calculation of interest rate in order to demonstrate compliance with the Act and Regulations;
- vi. withdraw all advertisements for products that do not comply with the Act or Regulations or advertisements that are fraudulent, deceptive or misleading;
- vii. withdraw all advertisements that do not comply with the prescribed content as set out in regulation 21;
- viii. instruct all agents acting on behalf of or persons using the name of Rudco Finance to similarly withdraw advertisements that do not comply with the provisions of sections 76 and 77 of the Act and regulation 21, noting that advertisements include e-mails, text messages and any similar messages sent to members of the general public and thus that such messages must similarly be withdrawn;
- ix. institute measures to ensure compliance with all the requirements that apply to agents, as stipulated in section 163 and regulations 59 and 61;
- x. cease the practice of accepting payments or fees from consumers prior to money actually being paid over to or on behalf of a consumer in terms of a transaction, in contravention of the Usury Act.

Within 15 business days after receiving this Notice, to present to the National Credit Regulator for its consideration,

- i. a proposal that sets out the manner in which Rudco Finance intends to reimburse consumers for amounts demanded or received from consumers in contravention with the National Credit Act;
- ii. a proposal that sets out the manner in which Rudco Finance intends to reimburse consumers for amounts demanded or received from consumers in contravention of the Usury Act.

C. As required in terms of section 55(3)(e), we would like to bring to your attention that the following orders may be made and penalties may be imposed if the required steps are not taken to rectify the areas of non-compliance:

- i. The NCR may refer this matter to the Tribunal, which may impose the penalties as defined in section 150 of the Act for each act of non-compliance, including
 - (a) declaring any conduct to be prohibited;
 - (b) interdicting such prohibited conduct;
 - (c) an administrative fine not exceeding the greater of 10% of annual turnover during the preceding financial year; or R 1 000 000 (Rand one Million);
 - (d) suspending or cancelling your registration;
 - (e) requiring repayment to consumers of any excess amounts charged together with interest; or
 - (f) any other appropriate order.
- ii. The NCR may further refer certain matters to the National Prosecuting Authority, which may institute legal action resulting in criminal sanctions.

D. We wish to bring it to your attention that you may object to this Notice in terms of section 56 of the Act and may request the Tribunal to review this Notice, within 15 business days after receiving this Notice.

Signed at Midrand on 13 August 2007,



Gabriel Davel
Chief Executive Officer
National Credit Regulator