AGRICULTURAL PRODUCE AGENTS COUNCIL

RULES IN RESPECT OF FRESH PRODUCE AGENTS

It is hereby made known that –

(a) the rules set out in the Schedule have been made under section 10(b) of the Agricultural Produce Agents Act, 1992, (Act No. 12 of 1992), read with section 22(2) and (3) of the said Act;

(b) that the rules shall come into effect on the date of publication hereof; and

(c) that the rules published by Government Notice No. R. 1821 of 1 October 1993, as amended by General Notice No. 58 of 1994, are hereby repealed on the said date of publication.

W. E. JOHNSON,
Registrar of Agricultural Produce Agents.

SCHEDULE
Arrangement of Rules

		Rule
	Definitions	1
Part I:	Code of conduct	2 – 11
Part II:	Fidelity fund	12 – 15
Part III:	Security	16 – 20
Part IV:	Receipt and sale of fresh produce	21 – 26
Part V:	Control and administration of trust accounts	27 – 35
Part VI	Disciplinary proceedings	36A
Part VII	Miscellaneous provisions	37 – 41

1. **Definitions**

In these rules, any word or expression to which a meaning has been assigned in the Act, unless the context otherwise indicates, shall have that meaning

"**auditor**" means a person registered in terms of section 15 of the Public Accountants' and Auditors Act, 1991 (Act No. 80 of 1991), as an accountant or auditor, and engaged in public practice as such;

"**cheque account**" means a cheque account referred to in rule 31.1;

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

"**employee**" means a person contemplated in subparagraph (ii) of paragraph (b) of the definition of 'fresh produce agent' in the Act;";

"**fresh produce**" means agricultural produce of the kinds specified in Part A of Schedule 1 of the Act;

"**gross business turnover**" means the total value of sales of agricultural produce made by a fresh produce agent on behalf of his principals;

"**market authority**" means the person or management body in whom the general management and control of a fresh produce market is seated;

RAAD VIR LANDBOUPRODUKTE-AGENTE

REËLS TEN OPSIGTE VAN VARSPRODUKTE-AGENTE

Dit word hiermee bekendgemaak dat –

(a) die reëls in die Bylae uiteengesit, kragtens artikel 10(b) van die Wet of Landbouprodukte-agente, 1992 (Wet No. 12 van 1992), gelees met artikel 22(2) en (3), gemaak is;

(b) dat die reëls op die datum van publikasie hiervan in werking tree; en

(c) dat die reëls gepubliseer by Goewerments-kennisgewing No. R. 1821 van 1 Oktober 1993, gewysig deur Algemene Kennisgewing No. 58 van 1994, hierby herroep word op genoemde datum van publikasie.

W. E. JOHNSON,
Registrateur van Landbouprodukte-agente

BYLAE
Indeling van Reëls

		Reël
	Woordomskrywing	1
Deel I:	Gedragskode	2 – 11
Deel II:	Getrouheidsfonds	12 – 15
Deel III:	Sekuriteit	16 – 20
Deel IV:	Ontvangs en verkoop van varsprodukte	21 – 26
Deel V:	Beheer en administrasie van trustrekening	27 – 35
Deel VI	Dissiplinêre prosedure	36A
Deel VII	Diverse bepalings	37 – 41

1. **Woordomskrywing**

Tensy uit die samehang anders blyk, sal woorde en uitdrukkings wat in die Wet gebruik is, dieselfde betekenis in hierdie reëls dra, en –

"**bank**" 'n bank wat ingevolge die Wet op Banke, 1990 (Wet No. 94 van 1990), as 'n bank geregistreer is;

"**bruto besigheidsomset**" beteken die totale waarde van verkope van varsprodukte deur 'n varsprodukte-agent namens sy prinsipale

"**die Raad**" die Raad vir Landbouprodukte-agente by artikel 2 van die Wet ingestel;

"**die Wet**" die Wet op Landbouprodukte-agente, 1992 (Wet No. 12 van 1992);

"**markowerheid**" die persoon of bestuursliggaam in wie die algemene bestuur en beheer van 'n varsproduktemark gevestig is;

"**ouditeur**" iemand wat ingevolge artikel 15 van die Wet op Openbare Rekenmeesters en Ouditeurs, 1991 (Wet No. 80 van 1991), as rekenmeester en ouditeur geregistreer is en as sodanig openbare praktyk beoefen;

"**tjekrekening**" 'n tjekrekening in reël 31.1 bedoel;

"**varsprodukte**" landbouprodukte van die soorte in Deel A van Bylae 1 by die Wet vermeld;

"the Act" means the Agricultural Produce Agents Act, 1992 (Act No. 12 of 1992);

"the Council" means the Agricultural Produce Agents Council established by section 2 of the Act;

PART I: CODE OF CONDUCT

2. **Integrity, objectivity and independence**

2.1 A fresh produce agent shall at all times –

(a) act honestly and conscientiously in the practising of his occupation;

(b) act in the best interest of his principals;

(c) avoid entering into relationships or obtaining interests that, either directly or indirectly, impair or threaten his capacity to act in accordance with paragraphs (a) and (b);

2.2 A fresh produce agent shall maintain an impartial approach in practising his occupation, and for this purpose be free of any influence or relationship that, either directly or indirectly, could impair his judgement or independence.

2.3 A fresh produce agent shall maintain such integrity and objectivity in the practising of his occupation as is necessary to enable him to apply unbiased judgment and objective consideration in forming an opinion or arriving at decisions.

3. **Knowledge and skills**

3.1 A fresh produce agent shall maintain his knowledge and skills at such a level that he is able to conduct his business in accordance with the applicable laws, regulations and rules as well as the technical and professional standards common to his occupation.

3.2 A fresh produce agent shall –

(a) ensure that his employees comply with the laws, regulations and rules applicable to his occupation, and for that purpose-

(i) he shall provide the necessary training;

(ii) he shall adequately supervise his employees;

(b) bring to the attention of the Council and other responsible authorities any non-compliance or suspected non-compliance of applicable laws, regulations or rules.

4. **Incompatible practices**

A fresh produce agent shall not hold decision making positions, controlling interests or offices of whatever nature, or engage in any venture, business or occupation, which results or could result in a conflict of interest or an impairment of his independent judgement in the practising of his occupation.

5. **Undue discrimination**

A fresh produce agent shall not unduly discriminate between principals.

6. **Remuneration**

6.1 No fresh produce agent may claim remuneration in an amount or at a higher rate or scale than usually

"werknemer" 'n Persoon soos bedoel in sub-paragraaf (ii) van paragraaf (b) van die definisie van "varsprodukte-agent" in die Wet.

DEEL I: GEDRAGSKODE

2. **Integriteit, objektiwiteit en onafhanklikheid**

2.1 'n Varsprodukte-agent moet te alle tye –

(a) eerlik en pligsgetrou in die beoefening van sy beroep optree;

(b) in die beste belang van sy prinsipale optree; en

(c) dit vermy om verwantskappe aan te gaan of belange te verkry wat, hetsy direk of indirek, sy vermoë om in ooreenstemming met paragrawe (a) en (b) op te tree, kan belemmer of bedreig.

2.2 'n Varsprodukte-agent moet 'n onpartydige benadering in die uitoefening van sy beroep handhaaf, en vir die doel vry van enige invloed of verwantskap wees wat, hetsy direk of indirek, sy oordeel of onafhanklikheid kan belemmer.

2.3 'n Varsprodukte-agent moet sodanige integriteit, objektiwiteit en onafhanklikheid in die uitoefening van sy beroep handhaaf as wat nodig is om hom in staat te stel om onpartydige oordeel en objektiewe oorwegings toe te pas om 'n mening te vorm of tot beslissings te kom.

3. **Kennis en vaardighede**

3.1 'n Varsprodukte-agent moet sy kennis en vaardighede op sodanige vlak handhaaf ten einde hom in staat te stel om sy besigheid ooreenkomstig die tersaaklike wette, regulasies en reëls asook die tegniese en professionele standaarde eie aan sy beroep, te bedryf.

3.2 'n Varsprodukte-agent moet –

(a) toesien dat sy werknemers die reëls en die wette en regulasies wat op sy beroep van toepassing is nakom en vir daardie doel-

(i) moet hy die nodige opleiding verskaf;

(ii) moet hy behoorlik toesig hou oor sy werknemers; en

(b) moet hy enige nie-nakoming of vermoedelike nie-nakoming van die tersaaklike wette, regulasies en reëls, onder die aandag van die Raad en ander verantwoordelike owerhede bring.

4. **Onversoenbare bedrywighede**

'n Varsprodukte-agent mag nie besluitnemings-posisies, beherende belange of ampte van enige aard hou of in enige onderneming, besigheid of beroep betrokke raak nie indien dit 'n botsing van belange of 'n belemmering van sy onafhanklike oordeel in die beoefening van sy beroep tot gevolg het of kan hê nie.

5. **Onbehoorlike diskriminasie**

'n Varsprodukte-agent mag nie op 'n onbehoorlike wyse tussen sy prinsipale diskrimineer nie.

6. **Vergoeding**

6.1 'n Varsprodukte-agent mag nie vergoeding in 'n bedrag of teen 'n koers of skaal vorder wat hoër is as dit wat normaalweg deur hom gevorder word nie,

claimed by him, unless the prior written approval of the principal has been obtained.

6.2 A fresh produce agent shall not –

(a) overreach his principal in any manner whatsoever;

(b) charge remuneration or recover costs or expenses at an amount, rate or scale which in the view of the Council is unreasonably high, having regard to all relevant circumstances.

(c) present any remuneration as a cost or an expense which is not normally regarded as a cost or expense.

7. **Acceptance of gifts**

No fresh produce agent or a member of his family shall otherwise than in accordance with generally accepted business practises accept any goods, service or hospitality that results or could result in a conflict of interest or an impairment of his independent judgement in the practising of his occupation.

8. **Financial obligations**

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

9. **Publicity and advertisements**

A fresh produce agent may by means of publicity and advertisements bring his business and the nature of the services rendered by him to the notice of the public, provided –

(a) a due sense of responsibility towards the fresh produce industry and the public is displayed therein; and

(b) the contents and presentation thereof in the opinion of the Council, bear testimony of good taste, and

(c) the fresh produce agent concerned does not draw comparisons with or disparage the services of other fresh produce agents or markets.

10. **Canvassing and touting**

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

(a) propagate any false or misleading or questionable information of any nature whatsoever;

(b) interfere directly or indirectly with the sale, handling or inspection of fresh produce entrusted for sale to another fresh produce agent;

(c) directly or indirectly influence purchasers not to buy certain fresh products, or fresh produce of a certain class, standard or type, or not to buy fresh produce from a certain fresh produce agent, or from a certain principal, unless he can show good cause therefore.

11. **Relations with market authority, other fresh produce agents, principals and the Council**

11.1 The behaviour of a fresh produce agent towards the market authority, other fresh produce agents, his principals and the Council shall be of such nature that it will foster co-operation and good relations.

tensy hy vooraf met sy prinsipaal skriftelik so ooreenkom.

6.2 Varsprodukte-agent mag nie –

(a) sy prinsipaal op enige wyse uitbuit nie;

(b) vergoeding van 'n prinsipaal vorder of uitgawes verhaal teen 'n bedrag, koers of skaal wat na die oordeel van die Raad in die omstandighede onredelikerwys hoog is nie.

(c) enige vergoeding as 'n koste of uitgawe inklee wat nie normaalweg as 'n koste of uitgawe beskou word nie.

7. **Aanvaarding van geskenke**

Geen varsprodukte-agent of lid van sy familie mag anders as ooreenkomstig algemeen-aanvaarde sakepraktyke, enige goedere, dienste of oormatige gasvryheid aanvaar wat kan lei tot ‘n konflik van belange of ‘n belemmering van sy onafhanklike oordeel in die beoefening van sy beroep nie.

8. **Finansiële verpligtinge**

'n Varsprodukte-agent moet te alle tye verseker dat finansiële verpligtinge deur horn aangegaan, nie sy onafhanklikheid aantas of kan aantas nie.

9. **Publisiteit en advertensies**

'n Varsprodukte-agent mag sy besigheid en die aard van die dienste deur hom gelewer, deur middel van publisiteit en advertensies onder die aandag van die publiek bring mits –

(a) 'n behoorlike verantwoordelikheidsin teenoor die varsproduktebedryf en die publiek daarin geopenbaar word; en

(b) die inhoud en aanbieding daarvan na die oordeel van die Raad van goeie smaak getuig; en

(c) die betrokke varsprodukte-agent nie vergelykings trek met of die dienste van ander varsprodukte-agente of -markte afkam nie.

10. **Werwing en lokking**

'n Varsprodukte-agent mag besigheid werf op voorwaarde dat hy nie—

(a) enige vals of misleidende of twyfelagtige inligting van welke aard ookal verskaf nie;

(b) direk of indirek inmeng by die verkoping, hantering of inspeksie van varsprodukte wat vir verkoop aan 'n ander varsprodukte-agent toevertrou is nie; of

(c) kopers direk of indirek beinvloed om nie sekere varsprodukte te koop nie, of om nie varsprodukte van ‘n sekere klas, standard of tipe te koop nie of om nie by ‘n sekere varsprodukte-agent te koop nie, tensy hy ‘n goeie rede daarvoor kan aandui.

11. **Verhoudings met ander varsprodukte-agente**

11.1 'n Varsprodukte-agent se optrede teenoor die markowerheid en ander varsprodukte-agente moet sodanig wees dat dit samewerking en goeie verhoudings bevorder.

11.2 Behoudens die bepalings van reël 3.2 (b), mag 'n varsprodukte-agent nie enige kwaadwillige of ongegronde kritiek oor die werksaamhede van 'n ander varsprodukte-agent uitspreek nie.

11.2 Subject to the provisions of rule 3.2 (b), a fresh produce agent shall not, express any malicious or unfounded criticism on the activities of another fresh produce agent.

11.3 No fresh produce agent shall receive, accept or handle any fresh produce dispatched to or intended for delivery to or sale by another fresh produce agent unless such other fresh produce agent does not have a representative to accept the delivery, and then only after all reasonable attempts have been made to notify the fresh produce agent concerned of that delivery.

PART II: FIDELITY FUND

12. **Applications for fidelity fund certificates**

12.1 An application for a fidelity fund certificate shall be made on a form available from the Council for this purpose.

12.2 Such form shall –

(a) be completed in full in accordance with the directions indicated thereon;

(b) be accompanied by the applicable application fee determined by the Council for this purpose, as well as the other applicable particulars and documents indicated thereon; and

(c) be forwarded by post to the Council to, or be delivered to the Council at, the address indicated thereon

12.3 A separate form shall be submitted to the Council in the following instances:

(a) in the case of a company, on behalf of that company and by every director of that company;

(b) in the case of a close corporation, on behalf of that close corporation and by every member of that close corporation;

(c) in the case of a trust, on behalf of the trust and by every trustee of that trust;

(d) in the case of an employee of a fresh produce agent, by every employee of that fresh produce agent; and

(e) in the case of a partnership, by each of the partners

13. **Payments for fidelity fund certificates**

When the Council issues a fidelity fund certificate to a fresh produce agent in terms of section 16(3)(c) of the Act, it shall notify the fresh produce agent concerned in writing of the amount payable to the Council in terms of section 16(3)(a) of the Act.

14. **Maintenance of fidelity fund certificates**

14.1 The Council shall annually not later than 30 April in writing notify each fresh produce agent who is the holder of a fidelity fund certificate, of the amount determined in terms of section 16(9)(a) of the Act, that is payable for the maintenance of such certificate.

14.2 Such payment shall reach the Council on or before 30 June first following the date of the relevant notice referred to in rule 14.1.

11.3 Geen varsprodukte-agent mag enige varsprodukte wat gestuur is aan of bedoel is vir aflewering aan of verkoop deur 'n ander varsprodukte-agent, ontvang, aanneem of hanteer nie tensy sodanige ander varsprodukte-agent nie 'n verteenwoordiger het om die aflewering te aanvaar nie, en dan slegs nadat alle redelike pogings aangewend is om die betrokke varsprodukte-agent van daardie aflewering in kennis te stel.

DEEL II: GETROUHEIDSFONDS

12. **Aansoeke om getrouheidsfondssertifikate**

12.1 'n Aansoek om 'n getrouheidsfondssertifikaat moet op 'n vorm gedoen word wat vir die doel van die Raad verkrygbaar is.

12.2 So 'n vorm moet –

(a) ooreenkomstig die voorskrifte daarop aangedui, ingevul word;

(b) vergesel gaan van die toepaslike aansoekgeld wat die Raad vir die doel bepaal, asook die ander toepaslike besonderhede en stukke daarop aangedui; en

(c) per pos aan die Raad gestuur word na, of per hand by die Raad afgelewer word by, die adres daarop aangedui.

12.3 ‘n Afsonderlike vorm sal in die volgende gevalle by die Raad ingedien word –

a) in die geval van ‘n maatskappy, namens die maatskappy en elke direkteur van daardie maatskappy;

b) in die geval van ‘n beslote korporasie, namens daardie beslote korporasie en elke lid van daardie beslote korporasie;

c) in die geval van ‘n trust, namens daardie trust en elke trustee van daardie trust;

d) in die geval van ‘n werknemer van ‘n varsprodukte-agent, deur elke werknemer van daardie varsprodukte-agent; en

e) in die geval van ‘n vennootskap, deur elkeen van die vennote.

13. **Betalings vir getrouheidsfondssertifikate**

Wanneer die Raad 'n getrouheidsfondssertifikaat ingevolge artikel 16(3)(c) van die Wet aan 'n varsprodukte-agent uitreik, moet hy die betrokke varsprodukte-agent skriftelik in kennis stel van die bedrag wat ingevolge artikel 16(3)(a) van die Wet aan die Raad betaalbaar is.

14. **Instandhouding van getrouheidsfondssertifikate**

14.1 Die Raad moet elke varsprodukte-agent wat die houer van 'n getrouheidsfondssertifikaat is, jaarliks laastens op 30 April skriftelik in kennis stel van die bedrag ingevolge artikel 16(9) (a) van die Wet bepaal, wat ten opsigte van die instandhouding van so 'n sertifikaat betaalbaar is.

14.2 So 'n betaling moet die Raad voor of op 30 Junie eersvolgende op die datum van die betrokke kennisgewing in reël 14.1 bedoel, bereik.

15. **Contributions towards fidelity fund**

15.1 The total amount that is annually payable to the Council for the account of the fidelity fund in terms of section 12(3)(a) of the Act, shall be R500 or 0,02 per cent of the gross business turnover of that fresh produce agent during the year up to and until 30 June immediately preceding such payment, whichever amount is the largest: Provided that –

(a) the amount of such annual payment shall not exceed an amount to be determined by the Council from time to time; and

(b) the liability for such annual payment shall be recoverable jointly and severally from any person or entity falling within the definition of “fresh produce agent”

15.2 An amount referred to in rule 15.1 shall –

(a) annually be paid to the Council on or before 31 October; and

(b) be confirmed by a certificate issued by the auditor of the fresh produce agent concerned which indicates his gross business turnover for the year concerned.

PART III: SECURITY

16. **Furnishing of security**

Security required from a fresh produce agent by the Council in terms of section 17(1) or 17(2) of the Act shall be furnished to the Council simultaneously with a payment referred to in rule 13, and shall be in such form as the Council may determine.

17. **Investment of security**

If the security referred to in rule 16 is in the form of cash, such cash must be invested by the Council in an interest-bearing account with a bank, and the Council may, subject to section 17(1) of the Act, pay the fresh produce agent concerned interest at the rate applicable to such account: Provided that -

(a) such interest shall not be less than the rate applicable to a savings account with a bank; and

(b) such payment shall only be made when the security is returned to the fresh produce agent concerned in terms of section 17(2) of the Act.

18. **Amount of security**

18.1 The amount of the security to be given to the Council by a fresh produce agent shall be R10 000, or an amount calculated in accordance with the following formula, whichever amount is the largest:
A + B + C
where
A =R10,000;
B = one-and-a-half per cent of the expected gross business turnover for the first twelve months following the date of issue of a fidelity fund certificate to that fresh produce agent where such expected gross business turnover is R500,000 or more, but less than R1,000,000 for that twelve month period;
C = one per cent of the expected gross business turnover in excess of R1,000,000, of the fresh produce agent concerned during the 12 months first following the date of such calculation.

15. **Bydraes tot getrouheidsfonds**

15.1 Die totale bedrag wat jaarliks ingevolge artikel 12(3)(a) van die Wet aan die Raad vir die rekening van die getrouheidsfonds betaalbaar is, is R500 of 0,02 persent van sy bruto besigheidsomset gedurende die betrokke jaar tot en met 30 Junie wat sodanige betaling voorafgaan, welke bedrag ookal die grootste is: Met dien verstande dat

(a) die bedrag van sodanige jaarlikse betaling nie ‘n bedrag soos van tyd tot tyd deur die Raad bepaal, oorskry nie; en

(b) die aanspreeklikheid vir sodanige jaarlikse betaling gesamentlik en afsonderlik verhaalbaar sal wees van enige persoon of entiteit wat binne die definisie van “varsprodukte-agent” omvat word.

15.2 'n Bedrag in reël 15.1 bedoel, moet –

(a) jaarliks voor of op 31 Oktober aan die Raad betaal word; en

(b) bevestig word deur 'n sertifikaat uitgereik deur die ouditeur van die betrokke varsprodukte-agent wat sy bruto besigheidsomset vir die betrokke jaar aantoon.

DEEL III: SEKURITEIT

16. **Verstrekking van sekuriteit**

Sekuriteit wat ingevolge artikel 17(1) of 17(2) van die Wet deur die Raad van 'n varsprodukte-agent vereis word, moet gelyktydig met 'n betaling in reël 13 bedoel, aan die Raad verstrek word en sal in sodanige vorm wees as wat die Raad bepaal.

17. **Belê van sekuriteit**

Indien die sekuriteit waarna in Reël 16 verwys word, in die vorm van kontant is, moet sodanige kontant deur die Raad belê word in ‘n rentedraende rekening by ‘n bank, en die Raad mag, onderworpe aan die bepalings van Artikel 17(1) van die Wet, aan die betrokke varsprodukte-agent die rente wat op sodanige rekening van toepassing is, betaal; met dien verstande dat –

a) sodanige rente nie minder sal wees nie as die koers van toepassing op ‘n spaarrekening by ‘n bank; en

b) sodanige betalings van rente sal slegs gemaak word wanneer die sekuriteit aan die betrokke varsprodukte-agent terugbetaal word in terme van Artikel 17(2) van die Wet.

18. **Bedrag van sekuriteit**

18.1 Die bedrag van die sekuriteit wat deur 'n varsprodukte-agent aan die Raad verstrek moet word, is R10000 of 'n bedrag ooreenkomstig die volgende formule bereken, welke bedrag ookal die grootste is:
A + B + C,
waar—
A =R10000;
B = een-en-'n half persent van die verwagte bruto besigheidsomset van R500,000 of meer maar kleiner as R1,000,000 van die betrokke varsprodukte-agent gedurende die 12 maande eersvolgende op die datum van sodanige berekening; en

18.2 For the purposes of a calculation in terms of rule 18.1, the expected gross business turnover shall be certified by the auditor of that fresh produce agent to the effect that the projections and assumptions which have been used in calculating such expected gross business turnover is reasonable and realistic in the circumstances

18.3 A calculation in terms of rule 18.1 shall be made at the time when a fidelity fund certificate is issued to a fresh produce agent, but may at any time thereafter be reviewed –

(a) if the Council is of the opinion that the gross business turnover of the fresh produce agent concerned is greater or smaller than initially estimated; or

(b) after that security or any portion thereof has been applied by the Council as contemplated in Section 14(5)(b) or 17(1) of the Act.

19. **Adjustment of security**

19.1 Whenever the Council is by virtue of a review of a calculation in terms of rule 18.3, of the opinion that the amount for which a fresh produce agent has given security has to be adjusted, it shall notify the fresh produce agent concerned in writing of the new amount.

19.2 If additional security is required as a result of such adjustment, it shall be furnished to the Council by the fresh produce agent concerned within 30 days of the date of a notice referred to in rule 19.1.

19.3 If such adjustment results in the amount of the security being reduced the Council shall by written notice to the fresh produce agent concerned and his guarantor (if applicable) inform him of such reduction.

20. **Refund, return or substitution of security**

Cash that has been furnished as security shall be repaid by the Council, and a guarantee that has been furnished as security shall be returned by the Council if –

(a) the fresh produce agent concerned discontinues business or has never commenced therewith, or has provided the Council with other security as a substitute for the said security; or

(b) it may in terms of section 17 (2) of the Act be refunded or returned.

PART IV : RECEIPT AND SALE OF FRESH PRODUCE

21. **Register of fresh produce received**

21.1 Each fresh produce agent shall keep a register at his business address in which he shall record the following particulars in respect of each consignment of fresh produce received by him for sale:

(a) The date of receipt of the consignment.
(b) The name and address of the principal from whom it was received.
(c) The number of the delivery note which accompanied it.
(d) The kind and class or grade of fresh product received.
(e) The quantity received.

C = een persent van die verwagte besigheidsomset bo R1,000,000, van die betrokke varsprodukte-agent gedurende die 12 maande eersvolgende op die datum van sodanige berekening.

18.2 Vir die doeleindes van die berekening ingevolge reël 18.1, moet die verwagte bruto besigheidsomset gesertifiseer word deur die ouditeur van daardie varsprodukte-agent tot die effek dat die projeksies en aannames wat gebruik is om sodanige verwagte bruto besigheidsomset te bereken, redelik en realisties in die omstandighede is.

18.3 'n Berekening ingevolge reël 18.1 word gedoen op die tydstip waarop 'n getrouheidsfondssertifikaat aan 'n varsprodukte-agent uitgereik word, maar kan te eniger tyd daarna hersien word –

(a) indien die Raad van oordeel is dat die bruto besigheidsomset van die betrokke varsprodukte-agent groter of kleiner is as wat aanvanklik beraam is; of

(b) nadat die sekuriteit of enige gedeelte daarvan deur die Raad aangewend is soos bedoel in Artikel 14(5)(b) of 17(1) van die Wet.

19. **Aanpassing van sekuriteit**

19.1 Wanneer die Raad uit hoofde van 'n hersiening van 'n berekening ingevolge reël 18.3, van mening is dat die bedrag waarvoor 'n varsprodukte-agent sekuriteit verstrek het, aangepas moet word, moet hy die betrokke varsprodukte-agent skriftelik van die nuwe bedrag in kennis stel.

19.2 Indien bykomende sekuriteit as gevolg van sodanige aanpassing vereis word, moet dit binne 30 dae na die datum van 'n kennisgewing in reël 19.1 bedoel, deur die betrokke varsprodukte-agent aan die Raad verstrek word.

19.3 Indien sodanige aanpassing tot gevolg het dat die bedrag van die sekuriteit verminder kan word, moet die Raad by wyse van skriftelike kennisgewing aan die betrokke varsprodukte-agent en sy garant (indien toepaslik) van sodanige vermindering in kennis stel.

20. **Terugbetaling, terugsending of vervanging van sekuriteit**

Kontant wat as sekuriteit verstrek is, word deur die Raad terugbetaal, en 'n waarborg wat as sekuriteit verstrek is, word deur die Raad teruggestuur indien–

(a) die betrokke varsprodukte-agent besigheid staak of nooit daarmee begin het nie, of ander sekuriteit ter vervanging van genoemde sekuriteit aan die Raad verstrek het; of

(b) dit ingevolge artikel 17(2) van die Wet terugbetaal of terugbesorg kan word.

DEEL IV : ONTVANGS EN VERKOOP VAN VARSPRODUKTE

21. **Register van varsprodukte ontvang**

21.1 Elke varsprodukte-agent moet 'n register by sy besigheidsadres hou waarin hy die volgende besonderhede ten opsigte van elke besending

21.2 The particulars referred to in rule 21.1 shall –

(a) be recorded in such register in chronological order of receipt of the consignments concerned; and
(b) be thus recorded not later than the business day first following the day of receipt of the consignment concerned.

21.3 If a fresh produce agent uses more than one register simultaneously, he shall notify the Council in writing of the number of registers that are in use.

21.4 Records kept in terms of this rule may be kept in the electronic format approved of by the Council.

22. **Marking of packed fresh produce**

22.1 If the containers in a consignment of packed fresh produce has not been thus marked by a principal, the fresh produce agent to whom it has been entrusted for sale shall indicate the name and address of such principal on each container or on a label affixed thereto before presenting it for sale.

22.2 Expenses attached to an action in terms of rule 22.1 by a fresh produce agent shall be deemed to be expenses incurred by him in connection with the sale of that packed fresh produce.

22.3 A fresh produce agent shall ensure that the containers concerned remain thus marked until they are delivered to a purchaser.

23. **Sales notes**

23.1 A fresh produce agent shall forthwith after each sales transaction and before the fresh produce concerned is removed from his custody, issue a sales note to the purchaser thereof.

23.2 The following particulars shall be indicated on a sales note:

(a) A serial number.
(b) The name or code mark of the fresh produce agent concerned.
(c) The date of the sale concerned.
(d) The name of the principal concerned.
(e) In the case of a credit sale, the name and physical and postal address of the purchaser concerned.
(f) The kind and class or grade of fresh product sold, and the quantity or mass so sold.
(g) The price at which each such quantity or mass was sold.
(h) The designation of the market or other premises at which such sale took place.

23.3 The sales note referred to in rule 23.1 may be produced in electronic form approved of by the Council and may be produced by a market authority on behalf of the fresh produce agent concerned.

24. **Payments for sales**

24.1 A cheque that is presented to a fresh produce agent as payment for fresh produce sold by him shall be made out in favour of the trust account of the fresh produce agent concerned, be crossed and be endorsed with the expression "not transferable" or "nie oordraagbaar".

24.2 if a cheque does not comply with the requirements set out in rule 24.1, the fresh produce agent concerned shall forthwith cross it, endorse it thus

varsprodukte deur horn vir verkoop ontvang, moet aanteken:

(a) Die datum van ontvangs van die besending.
(b) Die naam en adres van die prinsipaal van wie dit ontvang is.
(c) Die nommer van die afleweringsbrief wat dit vergesel het.
(d) Die soort en klas of graad varsproduk ontvang.
(e) Die hoeveelheid ontvang.

21.2 Die besonderhede in reël 21.1 bedoel, moet –

(a) in chronologiese orde van ontvangs van die betrokke besendings in so 'n register aangeteken word; en
(b) laastens op die besigheidsdag eersvolgende op die dag van ontvangs van die betrokke besending aldus aangeteken word.

21.3 Indien 'n varsprodukte-agent meer as een register gelyktydig gebruik, moet hy die Raad skriftelik in kennis stel van die getal registers wat in gebruik is.

21.4 Aantekeninge wat in terme van hierdie reël gehou moet word, mag in elektroniese formaat gehou word.

22. **Merk van verpakte varsprodukte**

22.1 Indien die houers in 'n besending verpakte varsprodukte nie reeds deur 'n prinsipaal aldus gemerk is nie, moet die varsprodukte-agent aan wie dit vir verkoop toevertrou is, die naam en adres van sodanige prinsipaal op elke houer of op 'n etiket wat daaraan geheg is, aanbring voordat hy dit vir verkoop aanbied.

22.2 Uitgawes verbonde aan 'n handeling ingevolge reël 22.1 deur 'n varsprodukte-agent word geag uitgawes te wees wat deur hom aangegaan is in verband met die verkoping van daardie verpakte varsprodukte.

22.3 'n Varsprodukte-agent moet verseker dat die betrokke houers aldus gemerk bly totdat dit aan 'n koper gelewer is.

23. **Verkoopnotas**

23.1 'n Varsprodukte-agent moet onmiddellik na elke verkooptransaksie en voordat die betrokke varsprodukte uit sy bewaring verwyder word, 'n verkoopnota aan die koper daarvan uitreik.

23.2 Die volgende besonderhede moet op 'n verkoopnota aangedui word:

(a) 'n Volgnommer.
(b) Die naam of kodemerk van die betrokke varsprodukte-agent.
(c) Die datum van die betrokke verkoping.
(d) Die naam van die betrokke prinsipaal.
(e) in die geval van 'n kredietverkoping; die naam, fisiese en posadres van die betrokke koper.
(f) Die soort en klas of graad varsproduk wat verkoop is en die hoeveelheid of massa aldus verkoop.
(g) Die prys waarteen elke sodanige hoeveelheid of massa verkoop is.
(h) Die benaming van die mark of ander perseel waar sodanige verkoping plaasgevind het.

23.3 Die verkoopsnota waarna in Reël 23.1 verwys word, mag in sodanige elektroniese formaat soos deur die Raad goedgekeur, geproduseer word en

and indicate thereon that it is for the credit of his trust account.

25. **Reports on unsold fresh produce**

25.1 If a consignment of fresh produce is not fully sold within three business days after the receipt thereof, the fresh produce agent concerned shall forthwith inform his principal of the extent and condition of the unsold quantity.

25.2 Similar reports shall thereafter be provided to a principal on a weekly basis until the full consignment has been sold or otherwise disposed of.

26. **Accounting to principals**

26.1 A fresh produce agent shall within 5 business days after having sold or otherwise disposed of fresh produce, issue a statement to his principal on which the following particulars are indicated:

(a) A serial number.
(b) The name of the fresh produce agent concerned.
(c) The name and address of the principal concerned.
(d) The date of receipt of the consignment concerned.
(e) The number of the delivery note that accompanied the consignment.
(f) The kind and class or grade of fresh produce received, the quantity thereof that has been sold, and the selling price and gross amount realised.
(g) Subject to the provisions of rule 26.3 (a), the number of the relevant sales notes referred to in rule 23, in sequence of the date of issue thereof.
(h) The amount and nature of each deduction in respect of expenses incurred in connection with the sale of the fresh produce concerned.
(i) The amount, rate or scale at which remuneration was claimed, and the amount of such remuneration.
(j) Particulars of fresh produce that have in terms of some or other law been found to be unsuitable to be presented for sale or have for another reason been withdrawn from sale.

26.2 Subject to the provisions of rule 26.3(b), copies of the relevant sales notes referred to in rule 23 shall accompany such statement.

26.3 If a fresh produce agent conducts business at a fresh produce market where the market authority allocates a reference number to each consignment of fresh produce that is received there, such fresh produce is sold under the control of the market authority, and the proceeds of sales is collected by the market authority on behalf of the fresh produce agent concerned—

(a) such reference number may be indicated on a statement referred to in rule 26.1 instead of the numbers of the relevant sales notes; and

(b) copies of the relevant sales notes need not accompany the statement concerned.

26.4 The serial number indicated on a statement in terms of rule 26.1(a) shall not later than the business day first following the date of issue of the statement concerned, be recorded in the relevant register referred to in rule 21 opposite the particulars of the consignment concerned.

mag deur die markowerheid namens die betrokke varsprodukte-agent geproduseer word.

24. **Betalings vir verkope**

24.1 'n Tjek wat aan 'n varsprodukte-agent aangebied word as betaling vir varsprodukte wat deur hom verkoop is, moet ten gunste van die trustrekening van die betrokke varsprodukte-agent uitgemaak word, gekruis wees en met die uitdrukking "nie oordraagbaar" of "not transferable" geendosseer wees.

24.2 Indien 'n tjek nie aan die vereistes in reël 24.1 uiteengesit, voldoen nie, moet die betrokke varsprodukte-agent dit onverwyld kruis, aldus endosseer en daarop aandui dat dit vir die krediet van sy trustrekening is.

25. **Verslae oor onverkoopte varsprodukte**

25.1 Indien 'n besending varsprodukte nie binne drie besigheidsdae na die ontvangs daarvan ten volle verkoop is nie, moet die betrokke varsprodukte-agent sy prinsipaal onverwyld oor die omvang en toestand van die onverkoopte hoeveelheid inlig.

25.2 Soortgelyke verslae moet daarna weekliks aan 'n prinsipaal voorsien word totdat die volle besending verkoop of andersins oor beskik is.

26. **Rekenskap aan prinsipale**

26.1 'n Varsprodukte-agente moet binne 5 besigheidsdae nadat hy varsprodukte verkoop of andersins daaroor beskik het, 'n staat aan sy prinsipaal uitreik waarop die volgende besonderhede aangedui is:

(a) 'n Volgnommer.
(b) Die naam van die betrokke varsprodukte-agent.
(c) Die naam en adres van die betrokke prinsipaal.
(d) Die datum van ontvangs van die betrokke besending.
(e) Die nommer van die afleweringsbrief wat die besending vergesel het.
(f) Die soort en klas of graad varsproduk wat ontvang is, die hoeveelheid daarvan wat verkoop is, en die verkoopprys en bruto bedrag wat gerealiseer is.
(g) Behoudens die bepalings van reël 26.3(a), die nommers van die tersaaklike verkoopnotas in reël 23 bedoel, in volgorde van die datum van uitreiking daarvan.
(h) Die bedrag en aard van elke aftrekking ten opsigte van uitgawes aangegaan In verband met die verkoop van die betrokke besending.
(i) Die bedrag, koers of skaal waarteen vergoeding gevorder is, en die bedrag van sodanige vergoeding.
(j) Besonderhede van varsprodukte wat ingevolge die een of ander wetsbepaling ongeskik bevind is om vir verkoop aangebied te word of om 'n ander rede van verkoping onttrek is.

26.2 Behoudens die bepalings van reël 26.3 (b), moet afskrifte van die tersaaklike verkoopnotas in reël 23 bedoel, so 'n staat vergesel.

26.3 Indien 'n varsprodukte-agent sake op 'n varsproduktemark doen waar die markowerheid 'n verwysingsnommer aan elke besending varsprodukte toeken wat daar ontvang word, sodanige varsprodukte onder beheer van die markowerheid verkoop word, en die opbrengs van

26.5 If a fresh produce agent intends to recover any amount other than a deduction referred to in rule 26.1(i) from the proceeds of a sale, he shall –

(a) be in possession of a written consent from the principal concerned in which such deduction is authorised; and

(b) indicate full particulars of such recovery on the relevant statement referred to in rule 26.1

26.6 When a fresh produce agent indicates particulars referred to in rule 26.1 (j) on a statement, he shall, when requested thereto by his principal, provide him with a copy of the order by the appropriate authority that the fresh produce concerned has in terms of some or other law been found to be unsuitable to be presented for sale.

PART V: CONTROL AND ADMINISTRATION OF TRUST ACCOUNTS

27. **Addresses at which accounting records are kept**

27.1 The accounting records referred to in section 18 of the Act shall be kept at the business address of a fresh produce agent as entered in the records of the Council.

27.2 Notwithstanding the provisions of rule 27.1, the Council may at the request of a fresh produce agent grant written approval that such records may be kept at another address specified in the approval concerned.

27.3 Such accounting records shall represent fully and accurately in accordance with generally accepted accounting practice the state of affairs and business of the fresh produce agent and explain the transactions and financial position of the fresh produce agent.

27.4 In determining what is meant by "generally accepted accounting practice" regard shall be had, inter alia, to any rulings of the Council published to fresh produce agents.

27.5 The accounting records shall distinguish in readily discernible form between business account transactions and trust account transactions.

27.6 Trust money shall in no circumstances be deposited in or credited to a business banking account, while money other than trust money at any time found in a trust banking account shall be transferred to a business account without undue delay; provided that a fresh produce agent which-

(a) makes transfer from its trust banking account to its business banking account at least once a month; and

(b) ensures that each such transfer covers the total amount due to it and debited as at a date not earlier than one week prior to the date of transfer shall be deemed to have complied with this rule.

28. **Opening and keeping of trust accounts**

28.1 The trust account kept and held by a fresh produce agent in terms of section 19(1)(a) of the Act at a bank shall be a cheque account.

verkoping deur die markowerheid ten behoewe van die betrokke varsprodukte-agent ingevorder word–

(a) kan sodanige verwysingsnommer in die plek van die nommers van die tersaaklike verkoopnotas op 'n staat in reël 26.1 bedoel, aangedui word; en

(b) hoef afskrifte van die tersaaklike verkoopnotas nie die betrokke staat te vergesel nie.

26.4 Die volgnommer wat ingevolge reël 26.1(a) op 'n staat aangedui word, moet laastens op die besigheidsdag eersvolgende op die datum van uitreiking van die betrokke staat in die tersaaklike register in reël 21 bedoel, teenoor die besonderhede van die betrokke besending aangeteken word.

26.5 Indien 'n varsprodukte-agent beoog om enige ander bedrag as 'n aftrekking In reël 26(1)(i) bedoel, van die opbrengs van 'n verkoping te verhaal, moet hy-

(a) oor die geskrewe toestemming van die betrokke prinsipaal beskik waarin sodanige verhaling gemagtig word; en

(b) volledige besonderhede van sodanige verhaling op die tersaaklike staat in reël 26.1 bedoel, aandui.

26.6 Wanneer 'n varsprodukte-agent besonderhede in reël 26.1(j) bedoel, op 'n staat aandui, moet hy, wanneer deur sy prinsipaal daartoe versoek, 'n afskrif van die lasgewing deur die toepaslike gesag dat die betrokke varsprodukte ingevolge die een of ander wetsbepaling ongeskik bevind is om vir verkoop aangebied te word, aan hom voorsien.

DEEL V: BEHEER EN ADMINISTRASIE VAN TRUSTREKENINGE

27. **Adresse waar rekeningkundige aantekeninge gehou word**

27.1 Die rekeningkundige aantekeninge in artikel 18 van die Wet bedoel, moet by die besigheidsadres van 'n varsprodukte-agent soos in die stukke van die Raad aangeteken, gehou word.

27.2 Ondanks die bepalings van reël 27.1, kan die Raad op versoek van 'n varsprodukte-agent skriftelike goedkeuring verleen dat sodanige aantekeninge by 'n ander adres in die betrokke goedkeuring vermeld, gehou word.

27.3 Sodanige rekeningkundige aantekeninge sal 'n volledige en juiste stand van sake van die besigheid van die varsprodukte-agent weergee in terme van algemene aanvaarde rekeningkundige praktyk en sal die transaksies en finansiële posisie van die varsprodukte-agent uiteensit.

27.4 By die bepaling van wat bedoel word met "algemeen aanvaarde rekeningkundige praktyk", word ondermeer gelet op beslissings van die Raad wat aan varsprodukte-agente bekend gemaak is.

27.5 Die rekeningkundige aantekeninge moet op maklik waarneembare wyse tussen besigheids-rekeningtransaksies en trustrekeningtransaksies onderskei.

27.6 Trustgeld mag onder geen omstandighede gedeponeer word in of gekrediteer word teen 'n besigheidsbankrekening nie, terwyl ander geld as trustgeld, wat op enige stadium in 'n onredelike vertraging oorgedra moet word na 'n

28.2 When a fresh produce agent opens such cheque account, he shall provide the bank concerned with a notice in the form set out in Annexure A.

28.3 A fresh produce agent shall within seven days after an account has been opened thus, provide the Council with a copy of such form on which the bank concerned has recorded the applicable particulars and acknowledged receipt thereof.

28.4 The provisions of rules 28.2 and 28.3 shall mutatis mutandis apply when a separate savings or other interest-bearing account is opened by a fresh produce agent in terms of section 19 (3) (a) of the Act to invest money paid into his trust account: Provided that –

(a) such savings or other interest-bearing account shall be opened and kept at the same branch of the bank where the cheque account of the fresh produce agent concerned is kept; and

(b) the amount in such savings or other interest-bearing account shall be available for use in the cheque account of the fresh produce agent concerned.

29. **Changes in connection with trust accounts**

Any change in connection with a cheque account or a savings or other interest-bearing account referred to in rule 28.4 shall be brought to the attention of the bank concerned and be reported to the Council in a manner similar to that set out in rules 28.2 and 28.3.

30. **Deposits in trust accounts**

30.1 The proceeds of the sale of fresh produce to be deposited into the trust account of a fresh produce agent in terms of section 19(1)(b) of the Act shall be deposited in his cheque account.

30.2 The name and number of the cheque account concerned and the expression "Trust Account" or "Trustrekening" shall be indicated on each deposit slip or other document by means of which such deposit is made.

30.3 When the market regulations or other rules that are in force at a fresh produce market authorise the market authority to claim a market fee or other statutory amount from principals, and the proceeds of sales are collected by the market authority on behalf of fresh produce agents, the balance payable to a fresh produce agent after deduction of such market fee or statutory amount shall in such case for the purposes of section 19(1)(b) of the Act, be deemed to be the proceeds of the sale of fresh produce.

31. **Withdrawals and transfers from trust accounts**

31.1 Subject to the provisions of rule 31.2, a payment or deduction from a trust account in terms of section 20 of the Act shall –

(a) in the case of a cheque account, not be made otherwise than by means of the issuing of a cheque or an electronic transfer; and

(b) in the case of a savings or other interest-bearing account referred to in rule 28.4, not be made otherwise than by means of an in-house transfer to

besigheidsbankrekening; met dien verstande dat ‘n varsprodukte-agent wat –

(a) ten minste een maal per maand oordragte van sy trustbankrekening na sy besigheidsbankrekening doen; en

(b) sorg dra dat elke sodanige oordrag die totale bedrag dek wat aan hom verskuldig is op ‘n datum nie vroeër nie as 1 week voor die datum van oordrag, geag word aan hierdie reël te voldoen het.

28. **Opening en hou van trustrekeninge**

28.1 Die trustrekening wat 'n varsprodukte-agent ingevolge artikel 19(1)(a) van die Wet by 'n bank open en hou, moet 'n tjek-rekening wees.

28.2 Wanneer 'n varsprodukte-agent so 'n tjek-rekening open, moet hy 'n kennisgewing in die vorm in Aanhangsel A uiteengesit, aan die betrokke bank voorsien.

28.3 'n Varsprodukte-agent moet binne sewe dae nadat 'n tjekrekening aldus geopen is, 'n afskrif van sodanige vorm waarop die betrokke bank die tersaaklike besonderhede aangeteken en ontvangs daarvan erken het, aan die Raad voorsien.

28.4 Die bepalings van reëls 28.2 en 28.3 is mutatis mutandis van toepassing wanneer 'n afsonderlike spaar- of ander rentedraende rekening ingevolge artikel 19(3)(a) van die Wet deur 'n varsprodukte-agent geopen word om geld wat in sy trustrekening gestort is, te belê: Met dien verstande dat –

(a) sodanige spaar- of ander rentedraende rekening by dieselfde tak van die bank geopen en gehou moet word as waar die betrokke varsprodukte-agent se tjekrekening gehou word; en

(b) die bedrag in sodanige spaar- of ander rentedraende rekening beskikbaar moet wees vir aanwending in die betrokke varsprodukte-agent se tjekrekening.

29. **Veranderinge in verband met trustrekeninge**

Enige verandering in verband met 'n tjekrekening of 'n spaar- of rentedraende rekening in reël 28.4 bedoel, moet op dieselfde wyse as in reëls 28.2 en 28.3 uiteengesit, onder die aandag van die betrokke bank gebring en aan die Raad gerapporteer word.

30. **Deposito’s in trustrekeninge**

30.1 Die opbrengs van die verkoping van varsprodukte wat ingevolge artikel 19(1)(b) van die Wet in die trustrekening van 'n varsprodukte-agent gestort moet word, moet in sy tjekrekening gedeponeer word.

30.2 Die naam en nommer van die betrokke tjekrekening en die uitdrukking "Trustrekening" of "Trust Account" moet aangedui word op elke depositostrokie of ander stuk deur middel waarvan so 'n deposito gemaak word.

30.3 Wanneer die markverordeninge of ander reëls wat by 'n varsproduktemark van krag is, die markowerheid magtig om 'n markfooi of ander statutêre bedrag van prinsipale te vorder, en die opbrengs van verkope deur die markowerheid ten behoewe van varsprodukte-agente ingevorder word, word die saldo wat in sodanige geval na

the cheque account of the fresh produce agent concerned.

(c) be made only to or for or on behalf of a trust creditor.

31.2 Fees deductible from such accounts by the bank at which they are kept, and interest earned on such accounts shall respectively be debited and credited against the business account of the fresh produce agent concerned.

31.3 No fresh produce agent shall withdraw any amount from his trust account in terms of section 20(1) of the Act in respect of his remuneration as a fresh produce agent or for other expenses incurred by him in connection with the sale of fresh produce unless –

(a) the proceeds of the sale of the fresh produce concerned has already been deposited in such account;

(b) in the case of such other expenses, it has already been incurred by him; and

(c) he is in possession of documentary proof to substantiate such withdrawal.

(d) the remuneration or expense has been correctly debited in his accounting records.

31.4 When making a transfer from its trust banking account to its business banking account, a fresh produce agent shall ensure that-

(a) the amount transferred is identifiable with and does not exceed the amount due to it; and

(b) the balance of any amount due to it remaining in its trust banking account is capable of identification with corresponding entries appearing in its trust ledger.

31.5 Any cheque drawn on the trust banking account of a fresh produce agent shall be made payable to or to the order of a payee specifically designated.

31.6 A fresh produce agent shall –

(a) ensure that the total amount of money in its trust banking account, trust savings or interest-bearing account referred to in Section 19[1] and 19[3][a] of the Act at any date shall not be less than the total amount of the credit balances of its trust credits;

(b) ensure that no account of any trust creditor is in debit; and

(c) employ and maintain a system to ensure that the requirements of rules 31.6.(a)and 31.6.(b) are not infringed when amounts are transferred from its trust banking account to its business banking account.

32. **Payments to principals**

32.1 A fresh produce agent shall effect the electronic transfer of money or forward the cheque by means whereof a payment is made to a principal in terms of section 20(1) of the Act, to the principal concerned not later than 5 business days after the fresh produce concerned has been sold.

32.2 The amount of such electronic transfer or of such cheque shall correspond with the amount due

aftrekking van sodanige markfooi of statutêre bedrag aan 'n varsprodukte-agent betaalbaar is, vir die doeleindes van artikel 19(1)(b) van die Wet geag die opbrengs van die verkoping van varsprodukte te wees.

31. **Onttrekkings en Oorplasings uit trustrekeninge**

31.1 Behoudens die bepalings van reël 31.2, mag 'n betaling uit of aftrekking van 'n trustrekening ingevolge artikel 20 van die Wet –

(a) in die geval van 'n tjekrekening, nie anders as deur middel van die uitreiking van 'n tjek of ‘n elektroniese oorplasing gedoen word nie; en

(b) in die geval van 'n spaar- of ander rente-draende rekening in reël 28.4 bedoel, nie anders as deur middel van 'n in-huis-oorplasing na die tjekrekening van die betrokke varsprodukte-agent gedoen word nie.

(c) slegs aan of ten behoewe van ‘n trustkrediteur gedoen word.

31.2 Gelde wat van sodanige rekeninge aftrekbaar is deur die bank waar dit gehou word en rente wat op sodanige rekeninge verdien word, moet onderskeidelik direk teen die besigheidsrekening van die betrokke varsprodukte-agent gedebiteer en gekrediteer word.

31.3 Geen varsprodukte-agent mag enige bedrag ingevolge artikel 20(1) van die Wet ten opsigte van sy vergoeding as varsprodukte-agent of vir ander uitgawes deur hom aangegaan in verband met die verkoping van varsprodukte uit sy trustrekening onttrek nie, tensy –

(a) die opbrengs van die verkoping van die betrokke varsprodukte reeds in sodanige rekening gestort is;

(b) in die geval van ander sodanige uitgawes, dit reeds deur horn aangegaan is; en

(c) hy oor dokumentêre bewys beskik om sodanige onttrekking te staaf.

(d) sy vergoeding of uitgawes korrek in sy rekeningkundige aantekeninge gedebiteer is

31.4 Wanneer ‘n varsprodukte-agent ‘n oordrag van sy trustbankrekening na sy besigheidsbankrekening doen, moet hy sorg dra dat –

(a) die bedrag oorgedra identifiseerbaar is met die bedrag aan hom verskuldig en dit nie oorskry nie; en

(b) die balans van enige bedrag aan hom verskuldig wat in sy trustbankrekening oorbly, identifiseerbaar is met ooreenstemmende inskrywings wat in sy trust grootboek verskyn.

31.5 Enige tjek getrek op die trustbankrekening van ‘n varsprodukte-agent moet betaalbaar gemaak word aan, of aan die orde van, ‘n begunstidge wat uitdruklik aangewys word.

31.6 ’n Varsprodukte-agent moet –

(a) sorg dra dat die totale bedrag geld in sy trustbankrekening, trust spaar - of ander rentedraende rekening waarna in Artikel 19(1) en 19(3)(a) van die Wet verwys word, op geen tydstip

indicated on the relevant statement issued to the principal concerned in terms of rule 26: Provided that the amounts due as indicated on two or more such statements may be combined for the purpose of payment with a single cheque or a single electronic transfer, in which case the fresh produce agent concerned shall also issue a summarized statement to his principal on which the following particulars are indicated:

(a) The serial numbers of each of the statements referred to in rule 26.1, as well as the nett amount due in terms of each such statement.

(b) The total nett amount owning.

(c) The number of the cheque or reference of the electronic transfer concerned.

32.3 The date of issue indicated on such cheque or such electronic transfer shall not be later than the date on which it has to be forwarded to the principal concerned in terms of rule 32.1.

32.4 A fresh produce agent shall not be entitled without first having obtained the written approval of his principal (which approval has been granted with reference to a specific purchaser, the identity of whom is disclosed in such approval), to sell his principal's fresh produce on the credit of his principal; provided however that such credit shall not be granted for a period which expires after the date on which the fresh produce agent has to account to his principal concerned in terms of rule 32.1.

33. **Reconciliation of trust accounts**

33.1 If, at the time of the monthly balancing of the accounting records in respect of a trust account in terms of section 19(3)(c) of the Act, it appears that it does not reconcile with the corresponding bank statements, the fresh produce agent shall forthwith report it to the Council in writing.

33.2 Every fresh produce agent who is obliged to open a trust account in terms of section 18(1) of the Act shall at its expense once in each calendar year, or at such other times as the Council may require, appoint an auditor to act on behalf of and as the representative of the Council to discharge the duties assigned to him in terms of this rule 33.

33.3 A fresh produce agent shall –

(a) allow an auditor appointed under rule 33 access to such of its records and all supporting documents as the auditor may deem necessary to examine for the purposes of discharging his duties under this rule;

(b) furnish the auditor with any authority which may be required to enable him to obtain such information, certificates or other evidence as he may reasonable require for such purposes.

33.4 A fresh produce agent shall ensure that the report to be furnished by an auditor in terms of Section 19[5] of the Act is so furnished within or at the required time; provided that the Council may in its discretion and on such conditions as it may stipulate, on written application by a fresh produce agent relating to a particular report, condone a failure by that fresh produce agent to comply with this requirement.

minder is as die totale bedrag van die kredietbalanse van sy trust krediteure nie;

(b) sorg dra dat geen rekening van ‘n trustkrediteur in debiet is nie; en

(c) stelsel gebruik en handhaaf om te verseker dat die vereistes van sub-reëls 31.6(a) en 31.6(b) nie oortree word nie wanneer bedrae van sy trustbankrekening, na sy besigheidsbankrekening oorgedra word.

32. **Betalings aan prinsipale**

32.1 'n Varsprodukte-agent moet die elektroniese oordrag of die tjek deur middel waarvan 'n betaling ingevolge artikel 20(1) van die Wet aan 'n prinsipaal gemaak word, laastens 5 besigheidsdae nadat die betrokke varsprodukte verkoop is, aan die betrokke prinsipaal stuur.

32.2 Die bedrag van so 'n elektroniese oordrag of tjek moet ooreenstem met die verskuldigde bedrag wat op die tersaaklike staat aangedui word wat ingevolge reël 26 aan die betrokke prinsipaal uitgereik is: Met dien verstande dat die verskuldigde bedrae wat op twee of meer sodanige state aangedui is, saamgevoeg kan word vir die doeleindes van betaling met 'n enkele elektroniese oordrag of tjek, in welke geval die betrokke varsprodukte-agent ook 'n opsommende staat aan sy prinsipaal moet uitreik waarop die volgende besonderhede aangedui word:

(a) Die volgnommers van elk van die betrokke state in reël 26.1 bedoel, asook die netto bedrag ingevolge elke sodanige staat verskuldig.

(b) Die totale netto bedrag verskuldig.

(c) Die nommer van die betrokke tjek of verwysing van die betrokke elektroniese oordrag.

32.3 Die datum van uitreiking wat op so 'n tjek aangedui word, of die datum van sodanige elektroniese oordrag mag nie later wees nie as die datum waarop dit ingevolge reël 32.1 aan die betrokke prinsipaal gestuur moet word.

32.4 ‘n Varsprodukte-agent sal nie geregtig wees om sonder die voorafverkrewe skriftelike toestemming van sy prinsipaal (welke toestemming gegee is met verwysing na ‘n spesifieke koper, die identiteit waarvan in die toestemming geopenbaar word), daardie prinsipaal se varsprodukte op krediet te verkoop nie; met dien verstande egter dat sodanige krediet nie toegestaan sal word vir ‘n periode wat eindig na die datum waarop die betrokke varsprodukte-agent in terme van reël 32(1) aan sy betrokke prinsipaal moet verreken nie.

33. **Rekonsiliasie van trustrekeninge**

33.1 Indien dit ten tyde van die maandelikse afsluiting van die rekenkundige aantekeninge ten opsigte van 'n trustrekening ingevolge artikel 19(3)(c) van die Wet blyk dat dit nie met die ooreenstemmende bankstate rekonsilieer nie, moet die betrokke varsprodukte-agent dit onverwyld skriftelik aan die Raad rapporteer.

33.2 Elke varsprodukte-agent wat verplig is om ‘n trustrekening in terme van Artikel 18(1) van die Wet te open, stel eenmaal elke kalender jaar, of op sodanige ander tye as wat die Raad vereis, op eie

33.5 Every auditor who has accepted an appointment in terms of Section 18[2] of the Act, shall –

(a) not sooner than two months and not later than ten months after the final date of every financial year of the fresh produce agent concerned, furnish the Council with an interim report which shall be in the form as set out in Annexure B to these rules

(b) within four months after the final date of every financial year of the fresh produce agent concerned, or at such other times as the Council may require, furnish the Council with a report which shall be in the form as set out in Annexure C to these rules;

(c) without delay report in writing directly to the Council if, at any time during the discharge of his function and duties under this rule –

(i) it comes to his notice that at any date the total of the balances shown on trust accounts in the accounting records of the fresh produce agent exceeded the total amount of the funds in its trust banking account and its trust saving or other interest bearing account;

(ii) any material queries regarding its accounting records which he has raised with the fresh produce agent have not been dealt with to his satisfaction;

(iii) any reasonable request made by him for access to its accounting records and supporting documents or for any authority referred to in rule 33.3 has not been met to his satisfaction.

33.6 A copy of the reports on the prescribed form required under these rules shall be forwarded by the auditor to the fresh produce agent concerned.

33.7 In any case where the Council is satisfied that it is not practicable to obtain the services of an auditor for the issuing of a report as prescribed under rule 33.2 it may in lieu thereof accept as compliance with the requirements of rule 33.2 such other evidence as it may deem sufficient.

33.8 A fresh produce agent shall before the end of each month provide the Council with –

(a) a reconciliation of every trust bank account held by him as at the date referred to in section 19(3)(c) of the Act and in the form as set out in Annexure D to these rules;

(b) a list of outstanding trust cheques including the number and date of each cheque which has not yet been honoured; and

(c) a copy of the last page of the bank statement of every trust bank account that is being held by him.

34. **Winding-up of trust accounts**

34.1 If the fidelity fund certificate of a fresh produce agent has been withdrawn by the Council or he otherwise terminates his business as a fresh produce agent, he shall forthwith request the bank at which his trust account is kept, to suspend all payments from such trust account.

34.2 Such fresh produce agent shall—

koste 'n ouditeur deur die Raad goedgekeur aan, om namens en as verteenwoordiger van die Raad die pligte wat deur hierdie Reël 33 aan hom opgedra word, te vervul.

33.3 'n Varsprodukte-agent moet –

(a) aan 'n ouditeur wat ingevolge Reël 33 aangestel is, insae in sodanige van sy rekeningkundige aantekeninge en alle stawende dokumente, bewyse of stukke as wat daardie ouditeur nodig ag om vir die vervulling van sy pligte te ondersoek; en

(b) verleen aan die ouditeur enige magtiging wat nodig mag wees om hom instaat te stel om sodanige inligting, sertifikate of ander bewys te verkry as wat hy redelikerwys mag benodig vir sodanige doeleindes.

33.4 'n Varsprodukte-agent sien toe dat die verslag wat ooreenkomstig Artikel 19(5) van die Wet deur 'n ouditeur gelewer word, binne of op die vereiste tyd aldus gelewer word; met dien verstande dat die Raad op skriftelike versoek van die varsprodukte-agent in verband met 'n bepaalde verslag, sodanige varsprodukte-agent se versuim om aan hierdie vereiste te voldoen, na goeddunke en op sodanige voorwaardes as wat hy mag bepaal, kan kondoneer.

33.5 Elke ouditeur wat ooreenkomstig die bepalings in Artikel 18(2) van die Wet 'n aanstelling aanvaar het –

(a) stel aan die Raad 'n tussentydse verslag wat in die vorm van Aanhangsel B tot die reëls geklee sal wees, beskikbaar nie vroeër nie as 2 maande en nie later nie as 10 maande na die einde van die vorige finansiële jaareinde van die betrokke varsprodukte-agent;

(b) lewer binne 4 maande na die finansiële jaareinde van die betrokke varsprodukte-agent, of op sodanige ander tye as wat die Raad vereis, aan die Raad 'n verslag wat in die vorm van Aanhangsel C tot hierdie reëls moet wees;

(c) rapporteer onverwyld regstreeks skriftelik aan die Raad indien, ter enige tyd gedurende die vervulling van sy taak en pligte ingevolge hierdie reël –

(i) dit onder sy aandag kom dat die totaal van die saldo's wat ten opsigte van trustrekeninge in die rekenkundige aantekeninge van die betrokke varsprodukte-agent aangetoon word, op enige datum die totaal van die gelde in sy trustbankrekeninge, sy spaar- of ander rentedraende rekeninge oorskry het;

(ii) wesenlike navrae wat die ouditeur aan die betrokke varsprodukte-agent in verband met sy rekeningkundige aantekeninge gerig het, nie tot sy bevrediging behandel is nie; en

(iii) nie tot sy bevrediging voldoen is nie aan 'n redelike versoek deur hom om insae in die rekeningkundige aantekeninge en alle stawende dokumente van die betrokke varsprodukte-agent of, magtiging waarna in Reël 33.3 verwys word.

33.6 'n Afskrif van die verslae op die voorgeskrewe vorms ingevolge hierdie reëls word deur die ouditeur aan die betrokke varsprodukte-agent gestuur.

(a) not later then the first business day following the date on which he made the request concerned, notify the Council thereof per telegram or fax; and

(b) if his business is terminated for any reason other than the withdrawal of his fidelity fund certificate—

(i) notify the Council thereof by telegram or fax not later than the first business day following the date on which he performed his last activity as an agent; and

(ii) return the fidelity fund certificate issued to him, to the Council within 30 days of such date.

34.3 A fresh produce agent who thus suspended payments from his trust account shall forthwith, for the purposes of the balancing of his accounting records in terms of section 18(4) of the Act –

(a) collect all amounts due to him for the credit of his trust account, and deposit it in the relevant cheque account;

(b) transfer the balance in any savings or interest-bearing account referred to in rule 28.4, to the relevant cheque account;

(c) compile all outstanding statements referred to in rule 26.1; and

(d) reconcile the accounting records relating to his trust account to reflect the state of affairs at the stage on which payments therefrom have been suspended.

34.4 A reconciliation in terms of rule 34.3 (d) shall reflect the following particulars:

34.4.1 The amount standing to the credit of the trust account concerned as made up of—

(a) the balance of the relevant cheque account;

(b) the balance of any savings or other interest-bearing account referred to in rule 31.4 that has not yet been transferred to the relevant cheque account in terms of rule 34.3 (b);

(c) the proceeds of the sale of fresh produce that has already been received but not yet been deposited in the relevant cheque account; and

(d) the proceeds of the sale of fresh produce that has not yet been collected in terms of rule 34.3 (a).

34.4.2. The amount that has still to be paid out of the trust account concerned in terms of the Act and these rules, as made up of –

(a) cheques that have already been drawn on the relevant cheque account but have not yet been cashed;

(b) the amounts payable to principals by virtue of statements issued or still to be issued in terms of rule 26.1;

(c) the respective amounts which, by virtue of documentary proof referred to in rule 34.3, are payable to the fresh produce agent concerned in respect of–

(i) his remuneration as an agent; and

(ii) expenses incurred by him in connection with the sale of fresh produce; and

In ‘n geval waar die Raad oortuig is dat dit nie doenlik is om die dienste van ‘n ouditeur vir die uitreiking van ‘n verslag soos voorgeskryf deur Reël 33.2 te verkry nie, mag hy in die plek daarvan ter voldoening aan die vereistes van Reël 33.2 sodanige ander bewys as wat hy voldoende ag, aanvaar.

33.8 ‘n Varsprodukte-agent moet voor die einde van elke maand die Raad voorsien van-

(a) ‘n rekonsiliasie van elke trust bankrekening deur hom gehou soos op die datum genoem in artikel 19(3)(c) van die Wet en in die vorm van Aanhangsel D tot hierdie reels;

(b) ‘n lys van uitstaande trust-tjeks wat nog nie gewissel is nie met die nommer en datum van elke tjek, en

(c) ‘n afskrif van die laaste bladsy van die bankstaat van elke trustrekening wat hy hou.

34. **Afsluiting van trustrekeninge**

34.1 Indien die getrouheidsfondssertifikaat van 'n varsprodukte-agent deur die Raad ingetrek is, of hy andersins ophou om as varsprodukte-agent besigheid te doen, moet hy die bank waar sy trustrekening gehou word, onverwyld versoek om alle betalings uit sodanige trustrekening op te skort.

34.2 So 'n varsprodukte-agent moet—

(a) die Raad laastens op die eerste besigheidsdag na die datum waarop hy die betrokke versoek gerig het, telegrafies of per faks daarvan in kennis stel; en

(b) indien sy besigheid om 'n ander rede as die intrekking van sy getrouheidsfondssertifikaat ten einde loop—

(i) die Raad laastens op die eerste besigheidsdag na die datum waarop hy sy laaste bedrywigheid as agent verrig het, telegrafies of per faks daarvan in kennis stel; en

(ii) die getrouheidsfondssertifikaat wat aan hom uitgereik is, binne 30 dae na sodanige datum aan die Raad terugbesorg.

34.3 'n Varsprodukte-agent wat betalings uit sy trust-rekening aldus opgeskort het, moet onverwyld vir die doeleindes van die afsluiting van sy rekenkundige aantekeninge ingevolge artikel 18 (4) van die Wet –

(a) alle bedrae wat aan horn vir die krediet van sy trustrekening verskuldig is, invorder en in die tersaaklike tjekrekening stort;

(b) die saldo in enige spaar- of ander rentedraende rekening in reël 28.4 bedoel, na die tersaaklike tjekrekening oorplaas;

(c) alle uitstaande state in reël 26.1 bedoel, saamstel; en

(d) die rekeningkundige aantekeninge wat op sy trustrekening betrekking het, rekonsilieer om die stand van sake op die stadium waarop betalings daaruit opgeskort is, weer te gee.

34.4 'n Rekonsiliasie ingevolge reël 34.3(d) moet die volgende besonderhede weergee:

(d) any other amounts that may lawfully be paid out of the trust account concerned.

34.5 Such reconciliation shall –

(a) commence on the business day first following the day on which payments from the trust account concerned have been suspended in terms of rule 34.1; and

(b) thereafter be continued on a daily basis until the accounting records of the fresh produce agent concerned have been balanced in accordance with the provisions of section 18 (4) of the Act.

34.6 If, after the auditing of the financial records concerned in terms of section 18(4) of the Act, the Council is satisfied that the balance in such trust account is sufficient to pay all amounts referred to in rule 34.4.2 –

(a) the Council shall in writing authorise the bank concerned to lift the suspension of payments from the trust account concerned;

(b) the Council shall provide the fresh produce agent concerned with a copy of such authorisation; and

(c) the fresh produce agent concerned shall forthwith draw cheques for the amounts referred to in rule 34.4.2 on the relevant cheque account and forward such cheques to the beneficiaries concerned together with the applicable statements referred to in rule 26, or such other evidence as may be necessary to explain the payments concerned.

35 **Deficits at the winding-up of trust accounts**

35.1 If the financial records of a fresh produce agent as audited in terms of section 18(4) of the Act show a deficit, an authority in terms of rule 34.6 shall be issued by the Council only after the fresh produce agent concerned has deposited an amount equal to such deficit in the relevant cheque account.

35.2 If such, fresh produce agent refuses or fails to deposit the amount concerned in the relevant cheque account, the Council may issue an authority referred to in rule 34.6 subject to such restrictions as it may in each case determine: Provided that the payment of the amounts referred to in rule 34.4.2 (a) and (b) to the principals of a fresh produce agent shall at all times enjoy precedence.

35.3 If the balance in a trust account at the winding-up thereof is insufficient for the full settlement of the amounts referred to in rule 34.4.2(a) and (b) the fresh produce agent concerned shall, when an authority referred to in rule 34.6 is issued subject to conditions –

(a) divide such balance pro rata between the principals concerned;

(b) draw cheques for such pro rata amounts on the relevant cheque account and forward it to the beneficiaries concerned together with –

(i) the applicable statements referred to in rule 26.1;

(ii) an explanation setting out the extent of each such pro rata payment and notifying the principal concerned that he is entitled to lodge a claim with the Council in terms of section 14 of the Act for the reimbursement of his monetary loss; and

34.4.1 Die bedrag wat tot krediet van die betrokke trustrekening staan, soos saamgestel uit –

(a) die saldo van die tersaaklike tjekrekening;

(b) die saldo van enige spaar- of rentedraende rekening in reël 31.4 bedoel, wat nog nie ingevolge reël 34.3(b) na die tersaaklike tjekrekening oorgeplaas is nie;

(c) die opbrengs van die verkoop van varsprodukte wat reeds deur horn ontvang is maar nog nie in die tersaaklike tjekrekening gedeponeer is nie; en

(d) die opbrengs van die verkoop van varsprodukte wat nog nie ingevolge reël 34.3(a) ingevorder is nie.

34.4.2. Die bedrag wat nog ingevolge die Wet en hierdie reëls uit die betrokke trustrekening betaal moet word, soos saamgestel uit –

(a) tjeks wat reeds op die tersaaklike tjekrekening getrek is, maar nog nie gewissel is nie;

(b) die bedrae wat aan prinsipaal betaalbaar is uit hoofde van state wat ingevolge reël 26.1 uitgereik is, of nog uitgereik moet word;

(c) die onderskeie bedrae wat uit hoofde van dokumentêre bewys in reël 34.3 bedoel, aan die betrokke varsprodukte-agent betaalbaar is ten opsigte van –

(i) sy vergoeding as agent; en

(ii) uitgawes deur hom aangegaan in verband met die verkoop van varsprodukte; en

(d) enige ander bedrag wat regtens uit die betrokke trustrekening betaal mag word.

34.5 So 'n rekonsiliasie moet –

(a) 'n aanvang neem op die besigheidsdag eersvolgende op die dag waarop betalings uit die betrokke trustrekening ingevolge reël 34.1 opgeskort is; en

(b) daarna op 'n daaglikse basis voortgesit word totdat die rekeningkundige aantekeninge van die betrokke varsprodukte-agent ooreenkomstig die bepalings van artikel 18(4) van die Wet afgesluit is.

34.6 Indien die Raad na die ouditering van die betrokke rekeningkundige aantekeninge ingevolge artikel 18(4) van die Wet, oortuig is dat die saldo in so 'n trustrekening voldoende is om alle bedrae in reël 34.4.2. bedoel, te betaal –

(a) moet die Raad die betrokke bank skriftelik magtig om die opskorting van betalings uit die betrokke trustrekening op te hef;

(b) moet die Raad 'n afskrif van sodanige magtiging aan die betrokke varsprodukte-agent voorsien; en

(c) moet die betrokke varsprodukte-agent onverwyld tjeks vir die bedrae in reël 34.4.2. bedoel, op die tersaaklike tjekrekening trek en sodanige tjeks tesame met die toepaslike state in reël 26 bedoel, of sodanige ander bewyse as wat nodig is om die betrokke betalings te verklaar, aan die betrokke begunstigdes voorsien.

(c) provide the Council with copies of all the documents referred to in paragraph (b).

35.4 Any amount referred to in rule 34.4.2(a) and (b) that is payable to the fresh produce agent concerned or, in the case of a juristic person, to a director thereof shall not be taken into consideration when the pro rata division of the balance or in the trust account concerned is made in terms of rule 35.3(a)

PART VI : DISCIPLINARY PROCEEDINGS

36.1.The Council shall have disciplinary jurisdiction over all fresh produce agents no matter where the conduct which is, or allegedly is improper is perpetrated.

36.2 A complaint shall be in writing with sufficient particulars of the conduct complained about and shall be lodged with the registrar.

36.3 The Registrar may require a complainant to provide by affidavit further particulars on any aspect of the complaint.

36.4. Upon receipt of a complaint, the registrar may –

(a) where it is of the opinion that the complaint does not disclose a prima facie case of improper conduct or where a complainant has neglected or refused to comply with the requirements of the registrar under these rules, dismiss the complaint and inform the complainant accordingly;

(b) where he is of the opinion that a prima facie case of conduct on the part of the fresh produce agent concerned has been made out –

(i) furnish the fresh produce agent with particulars of the complaint and call upon him to furnish the registrar in writing within such time as the registrar may direct, with his explanation in answer to the complaint, and may require such explanation to be verified by affidavit; or

(ii) at any time and whether or not it has also proceeded or also thereafter proceeds under rule 36.4(b)(i)

(aa) call upon him to appear at such time and place as it may determine to explain or elucidate or discuss the matter; or

(bb) lodge an investigation in terms of Section 24(1) of the Act.

Provided that the referral of the complaint to the fresh produce agent shall be in writing with a copy thereof to the person in charge at the relevant agency who shall likewise respond to the complaint;

(c) when, upon a consideration of the complaint and the fresh produce agent's explanation in answer thereto or elucidation of the matter or the results of an investigation held in terms of rule 36.4(b)(ii)(bb), the registrar is of the opinion that no prima facie case of improper conduct has been made out, dismiss the complaint and notify the complainant and the fresh produce agent accordingly;

(d) when, upon the consideration of the complaint and the fresh produce agent's explanation in answer thereto or the results of an investigation in terms of rule 36.4(b)(ii)(bb), the registrar is satisfied that the complaint is justified but of a trivial nature, inform

35. **Tekorte by die afsluiting van trustrekeninge**

35.1 Indien die rekeningkundige aantekeninge van 'n varsprodukte-agent soos ingevolge artikel 18(4) van die Wet geouditeer, 'n tekort toon, word 'n magtiging ingevolge reël 34.6 slegs deur die Raad uitgereik nadat die betrokke varsprodukte-agent 'n bedrag gelykstaande aan sodanige tekort in die tersaaklike tjekrekening gestort net.

35.2 Indien so 'n varsprodukte-agent weier of versuim om die betrokke bedrag in die tersaaklike tjekrekening te stort, kan die Raad 'n magtiging in reël 37.6 bedoel, onderworpe aan sodanige beperkings as wat hy doenlik ag, uitreik: Met dien verstande dat die betaling van die bedrae in reël 34.4.2(a) en (b) bedoel, aan die prinsipale van 'n varsprodukte-agent te alle tye voorrang geniet.

35.3 Indien die saldo in 'n trustrekening by die afsluiting daarvan onvoldoende is vir die volle vereffening van die bedrae in reël 34.4.2 (a) en (b) bedoel, moet die betrokke varsprodukte-agent, wanneer 'n magtiging in reël 34.6 bedoel, onderworpe aan beperkings uitgereik word –

(a) sodanige saldo pro rata tussen die betrokke prinsipale verdeel;

(b) tjeks vir sodanige pro rata bedrae op die tersaaklike tjekrekening trek en dit aan die betrokke begunstigdes voorsien tesame met –

(i) die toepaslike state in reël 26.1 bedoel;

(ii) 'n verduideliking waarin die omvang van elke sodanige pro rata betaling uiteengesit word en die betrokke prinsipaal in kennis gestel word dat hy geregtig is om ingevolge artikel 14 van die Wet 'n eis vir die vergoeding van sy geldelike verlies by die Raad in te dien; en

(c) afskrifte van alle stukke in paragraaf (b) bedoel, aan die Raad voorsien.

35.4 'n Bedrag in reël 34.4.2 (a) en (b) bedoel, wat aan 'n varsprodukte-agent of, in die geval van 'n regspersoon, 'n direkteur daarvan betaalbaar is, word nie in ag geneem wanneer die pro rata verdeling van die saldo in die betrokke trustrekening ingevolge reël 35.3(a) gedoen word nie.

DEEL VI : DISSIPLINêRE PROSEDURE

36.1 Die Raad het dissiplinêre bevoegdheid oor alle varsprodukte-agente ongeag waar die gedrag wat werklik of na bewering onbehoorlik is, plaasgevind het.

36.2 'n Klagte moet op skrif wees met genoegsame besonderhede van die gedrag waaroor gekla word en word by die Registrateur ingedien.

36.3 Die Registrateur kan eis dat 'n klaer by eedsverklaring verdere besonderhede oor enige aspek van die klagte verstrek.

36.4 Na ontvangs van 'n klagte kan die Registrateur –

(a) sodanige klagte afwys en die klaer dienooreenkomstig in kennis stel indien hy van mening is dat dit nie 'n prima facie saak van onbehoorlike gedrag openbaar nie, of indien die klaer nagelaat of geweier het om aan die

the complainant and the fresh produce agent in writing of his decision.

(e) when, upon a consideration of the complaint and the fresh produce agent's explanation in answer thereto or in the absence of or failing such explanation or the results of an investigation in terms of rule 36.4(b)(ii)(bb), the Registrar is of the opinion that a prima facie case of improper conduct has been made out call upon the fresh produce agent concerned on not less than 30 days notice to appear at such time and place as the registrar may determine in order that a disciplinary hearing under Section 25 of the Act may be conducted, in which event the registrar shall convene a disciplinary tribunal as contemplated in Section 25 of the Act.

36.5 .During the course of proceedings conducted under rule 36.4(e) the disciplinary tribunal shall afford the fresh produce agent concerned an opportunity of adducing evidence relevant to the subject matter of the hearing and of making such other relevant representations as he may wish.

36.6 The Disciplinary tribunal or the prosecutor may at any stage prior to or during the course of the hearing summon any person as a witness and interrogate or re-interrogate him: provided that

(a) such witness may be cross-examined by the fresh produce agent concerned or his representative; and

(b) the relevant fresh produce agent concerned may only be examined if he has already testified at the hearing or if a statement deposed to by him has been accepted as evidence at the hearing.

36.7 If a fresh produce agent or his representative is not present during the hearing and the Disciplinary tribunal is satisfied that the fresh produce agent is aware of the hearing, the hearing shall be proceeded with in his absence and a plea of not guilty shall be entered, unless the fresh produce agent has in writing pleaded guilty to the charge against him, in which event that will be noted in his plea.

36.8 If a fresh produce agent desires a postponement of the hearing, he shall apply for such postponement to the Disciplinary tribunal provided that the chairperson of the Disciplinary tribunal may in extraordinary or compelling circumstances grant such postponement either telephonically, or by way of telefax or by way of a letter. At the hearing of the matter, the disciplinary tribunal shall decide whether the wasted costs occasioned by such postponement should be paid by the fresh produce agent or not.

36.9 Evidence by way of affidavit or other document is admissible, but the disciplinary tribunal is entitled to adjudicate the evidential value thereof by taking into consideration the fact that the evidence contained therein has not been tested in cross-examination.

36.10 The record, or any part thereof, of a legally appointed court, or a statutory body, is accepted as prima facie evidence if the document has been certified as a true copy.

Registrateur se eise kragtens hierdie reëls te voldoen.

(b) Indien hy van mening is dat 'n prima facie saak van onbehoorlike gedrag aan die kant van die betrokke varsprodukte-agent uitgemaak is –

(i) aan die varsprodukte-agent besonderhede van die klag te verskaf, hom versoek om sy verduideliking en antwoord op die klagte skriftelik binne sodanige tyd as wat die Registrateur gelas, aan die Registrateur te verstrek en eis dat sodanige verduideliking deur 'n eedsverklaring bevestig word; of

(ii) ongeag of hy (die Registrateur) ook ingevolge Reël 36.4(b)(i) opgetree het of daarna ook aldus optree –

(aa) die varsprodukte-agent te enige tyd aansê om op sodanige tyd en plek as wat die Registrateur bepaal, te verskyn, ten einde die saak te verduidelik of toe te lig of te bespreek; of

(bb) 'n ondersoek in terme van Artikel 24(1) van die Wet instel:

Met dien verstande dat die verwysing van 'n klagte na die varsprodukte-agent skriftelik moet wees met 'n afskrif aan die persoon wat in beheer is van die relevante agentskap, wat eweneens op die klagte moet reageer.

(e) die klagte afwys en die varsprodukte-agent dienooreenkomstig in kennis te stel indien die Registrateur na oorweging van die klagte en die varsprodukte-agent se verduideliking in antwoord daarop of toeligting van die saak of die uitslag van 'n ondersoek wat gehou is in terme van Reël 36.4(b)(ii)(bb) van mening is dat geen prima facie saak van onbehoorlike gedrag uitgemaak is nie;

(d) die klaer en die varsprodukte-agent skriftelik van sy beslissing in kennis stel indien hy na oorweging van die klagte en die varsprodukte-agent se verduideliking en antwoord daarop of na oorweging van die uitslag van 'n ondersoek wat in terme van Reël 36.4(b)(ii)(bb) gehou is, daarvan oortuig is dat die klagte geregverdig maar van 'n nietige aard is;

(e) Indien die Registrateur na oorweging van die klagte en die varsprodukte-agent se verduideliking en antwoord daarop, of in die afwesigheid of by gebreke van sodanige verduideliking of na oorweging van die uitslag van 'n ondersoek wat in terme van Reël 36.4(b)(ii)(bb) gehou is, van mening is dat 'n prima facie saak van onbehoorlike gedrag uitgemaak is, die betrokke varsprodukte-agent met minstens 30 dae kennisgewing aansê om op sodanige tyd en plek as wat die Registrateur mag bepaal, te verskyn sodat 'n dissiplinêre verhoor ingevolge Artikel 25 van die Wet gehou kan word en in sodanige geval moet die Registrateur 'n dissiplinêre tribunaal soos bedoel in Artikel 25 van die Wet saamstel.

36.5. Die loop van verrigtinge wat ingevolge Reël 36.4(e) plaasvind, gee die dissiplinêre tribunaal die betrokke varsprodukte-agent 'n geleentheid om getuienis wat relevant is tot die onderwerp van die dissiplinêre verhoor, aan te voer en om sodanige ander tersaaklike vertoë te rig as wat hy verlang.

36.11 If the fresh produce agent pleads guilty to a charge and the Disciplinary tribunal conducting the hearing is satisfied that the act or omission amounts to improper conduct on the part of the fresh produce agent, the disciplinary tribunal may find the fresh produce agent guilty and after consideration of the fresh produce agent's reply or explanation impose a sanction contemplated in section 26 of the Act.

36.12 After a summons and charge sheet have been served on the fresh produce agent, and before the disciplinary hearing commences, the fresh produce agent may in writing notify the registrar or if a disciplinary tribunal has already been convened, the chairperson thereof that he pleads guilty to the charge or charges set forth in the charge sheet. If the Disciplinary tribunal is convinced that the charge or charges can be disposed of without further enquiry, it notifies the fresh produce agent and the complainant (if there is one) in writing that the hearing will not be proceeded with, and it finalises the matter in accordance with the provisions of rule 36.11.

36.13 The registrar may furnish the fresh produce agent concerned at his written request with copies of the record of the hearing or extracts therefrom against payment by him of the cost of the making thereof.

36.14 Where a fine is imposed and/or an order made that a fresh produce agent shall pay a certain amount of money and he is granted permission to make payment by instalments, the total outstanding amount of the fine and/or the amount of money becomes payable if the fresh produce agent should fail to pay any one instalment on the due date. The amount owing from time to time bears interest at the mora interest rate determined from time to time in terms of the Prescribed Rate of Interest Act, 55 of 1975.

36.15 At the conclusion of the hearing, the Disciplinary tribunal which conducted the hearing shall consider the evidence and the argument of both parties in order to rule on the fresh produce agent's guilt or innocence and the appropriate sanction (if any) and the costs of the proceedings. The Disciplinary tribunal may adjourn the proceedings for the purpose of considering its finding.

36.16 As soon as possible after the conclusion of a hearing the fresh produce agent and the complainant (if there is one) shall be informed verbally or by registered post of the Disciplinary tribunal's decision and the sanction imposed.

36,17 A certificate signed by the Registrar containing reasonable particulars of a fresh produce agent's previous convictions and sanctions imposed shall be deemed prima facie evidence of such convictions and sentences, on presentation thereof to the Disciplinary tribunal.

36.18 Subject to the provisions of these rules, the person presiding at the hearing shall determine the procedure according to which the hearing shall be conducted.

36.19 No individual and no group of individuals, and no body corporate or other association, not having, in the opinion of the Registrar an interest in the

36.6 Die dissiplinêre tribunaal of die aanklaer mag op enige stadium voor of tydens die dissiplinêre verhoor enigiemand oproep as getuie en hom by die dissiplinêre verhoor ondervra of her-ondervra; met dien verstande dat

(a) sodanige getuie deur die betrokke varsprodukte-agent of sy verteenwoordiger gekruisvra mag word; en

(b) die betrokke varsprodukte-agent slegs ondervra mag word indien hy reeds by die dissiplinêre verhoor getuig het of 'n verklaring van hom as getuienis by die dissiplinêre verhoor aanvaar is.

36.7 Indien die betrokke varsprodukte-agent of sy verteenwoordiger nie by die dissiplinêre verhoor teenwoordig is nie en die dissiplinêre tribunaal tevrede is dat hy bewus is van die dissiplinêre verhoor, word dit in sy afwesigheid voortgesit en word 'n pleit vir onskuldig aangeteken, tensy die betrokke varsprodukte-agent skriftelik op die aanklag teen hom onskuldig pleit, welke geval dit as sy pleit aangeteken word.

36.8 Indien 'n varsprodukte-agent uitstel van die dissiplinêre verhoor verlang, moet hy aansoek daarom doen voor die dissiplinêre tribunaal; met dien verstande dat die voorsitter van die dissiplinêre tribunaal in buitengewone of dwingende omstandighede sodanig uitstel of per telefoon of telefaks of brief mag toestaan. By die verhoor van die aangeleentheid, beslis die dissiplinêre tribunaal of die verspilde koste wat deur die uitstel veroorsaak is deur die betrokke varsprodukte-agent betaal moet word aldan nie.

36.9 Getuienis by wyse van beëdigde verklaring of ander dokument is toelaatbaar, maar die dissiplinêre tribunaal is geregtig om die bewyswaarde daarvan te beoordeel met inagneming van die feit dat die getuienis daarin vervat nie deur kruisondervraging getoets is nie.

36.10 Die oorkonde, of enige deel daarvan, van 'n wetlik ingestelde hof, of statutêre liggaam, word as prima facie getuienis aanvaar indien dit as 'n ware afskrif gesertifiseer is.

36.11 Indien die varsprodukte-agent skuldig pleit op die klagte en die dissiplinêre tribunaal oortuig is dat die handeling of nalate op onbehoorlike gedrag deur die varsprodukte-agent neerkom, mag die dissiplinêre tribunaal 'n bevinding van skuldig uitbring, en na oorweging van die varsprodukte-agent se antwoord of verduideliking 'n sanksie soos bedoel in Artikel 26 van die Wet op te hef.

36.12 Nadat 'n dagvaarding en klagstaat op die varsprodukte-agent beteken is, en voordat die dissiplinêre verhoor begin, mag die varsprodukte-agent die Registrateur of indien 'n dissiplinêre tribunaal reeds saamgestel is, die voorsitter daarvan skriftelik in kennis stel dat hy skuldig pleit op aanklag of aanklagte soos uiteengesit in die klagstaat. Indien die dissiplinêre tribunaal oortuig is dat die aanklag of aanklagte sonder verdere ondersoek afgehandel kan word, stel hy die betrokke varsprodukte-agent en die klaer (as daar een is) skriftelik in kennis dat die dissiplinêre verhoor nie meer sal plaasvind nie en handel hy die saak af ooreenkomstig die bepalings van Reël 36.11.

subject matter of a hearing, shall be entitled to information relating to it.

PART VII : MISCELLANEOUS PROVISIONS

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

Whenever a fresh produce agent or any of his employees are convicted of an offence involving an element of dishonesty, such fresh produce agent shall within seven days after the date of sentencing, notify the Council by registered post of the date of sentence, the nature of the offence, the sentence imposed, and by which court.

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

38.1 A payment of unclaimed moneys to the Council in terms of section 20(2)(a) of the Act shall be accompanied by a copy of the relevant statement referred to in rule 26.1.

38.2 Payments referred to in rule 38.1 shall annually be made to the Council during March and September to reach the Council not later than the last business day of each of the said months.

39. **Payment of moneys**

Any amount payable to the Council in terms of the Act or these rules shall be paid by cheque, postal order or money order made out in favour of the Agricultural Produce Agents Council.

40. **Address of Council**

The address of the Council shall –

(a) for the purposes of documents forwarded by post, be Private Bag X17, Brooklyn Square, 0075; and

(b) for the purposes of documents delivered by hand, be Ground Floor, Momentum Park, 105 Nicolson Street, Brooklyn, Pretoria.

41. **Title of rules**

These rules shall be called the Rules in respect of Fresh Produce Agents, 2005.

36.13 Die Registrateur mag die betrokke varsprodukte-agent op sy skriftelike aanvraag voorsien van afskrifte van die oorkonde van die dissiplinêre verhoor of van uittreksels daaruit teen betaling van koste om dit te maak.

36.14 Waar ‘n boete opgelê word en of ‘n bevel gemaak word dat die betrokke varsprodukte-agent ‘n bedrag geld moet betaal en verlof aan hom gegee word dat betaling by wyse van paaiemente mag geskied, is die totale verskuldigde boete en/of bedrag geld betaalbaar indien die betrokke varsprodukte-agent sou versuim om enige paaiemente op die vervaldag daarvan te betaal. Die bedrag wat van tyd tot tyd verskuldig is, dra rente teen die mora rentekoers soos van tyd tot tyd bepaal word ingevolge die Wet op Voorgeskrewe Rentekoerse, 55 van 1975.

36.15 Na afloop van die dissiplinêre verhoor, oorweeg die dissiplinêre tribunaal die getuienis en die betoë aan beide kante met die oog op ‘n bevinding ten aansien van die betrokke varsprodukte-agent se skuld of onskuld en ‘n gepaste sanksie (indien enige) en die koste van die verrigtinge. Die dissiplinêre tribunaal mag vir doeleindes van die oorweging van sy bevinding die dissiplinêre verhoor verdaag.

36.16 So gou doenlik na die dissiplinêre verhoor word besonderhede van die dissiplinêre tribunaal se bevinding en sanksie (indien enige) aan beide die betrokke varsprodukte-agent en die klaer (as daar een was) mondeling of per geregistreerde pos oorgedra.

36.17 ‘n Sertifikaat onderteken deur die Registrateur, met bevattende redelike besonderhede van ‘n varsprodukte-agent se vorige skuldig-bevindings en sanksies opgelê, word by voorlegging daarvan aan die dissiplinêre tribunaal, as prima facie getuienis van sodanige skuldigbevindings en sanksies opgelê, beskou.

36.18 Behoudens die bepalings van hierdie reëls bepaal die voorsitter van die dissiplinêre verhoor, die prosedure waarvolgens die dissiplinêre verhoor gehou word.

36.19 Geen individu en geen groep individue en geen regspersoon of ander vereniging wat na die mening van die Registrateur nie by die onderwerp van ‘n dissiplinêre verhoor belang het nie, is op inligting oor sodanige dissiplinêre verhoor geregtig.

DEEL VII : DIVERSE BEPALINGS

37. **Sekere veroordelings by Raad aanmeldbaar**

Wanneer 'n varsprodukte-agent of enigeen van sy werknemers skuldig bevind is aan 'n misdryf waarvan oneerlikheid 'n element is, moet sodanige varsprodukte-agent die Raad binne sewe dae na die datum van vonnisoplegging per geregistreerde pos in kennis stel van die datum van vonnisoplegging, die aard van die misdryf, die vonnis wat opgelê is, en deur watter hof.

38. **Oorbetaling van onopgeëiste geld aan Raad**

38.1 'n Betaling van onopgeëiste geld aan die Raad ingevolge artikel 20(2)(a) van die Wet moet vergesel gaan van 'n afskrif van die tersaaklike staat in reël 26.1 bedoel.

38.2 Betalings in reël 38.1 bedoel, moet jaarliks gedurende Maart en September aan die Raad gemaak word om die Raad laatstens op die laaste besigheidsdag van elk van genoemde maande te bereik.

39. **Betaling van gelde**

Enige bedrag wat ingevolge die Wet of hierdie reëls betaalbaar is, moet per tjek, posorder of poswissel wat ten gunste van die Raad vir Landbouprodukte-agente uitgemaak is, betaal word.

40. **Adres van Raad**

Die adres van die Raad is –

(a) vir die doeleindes van stukke wat per pos gestuur word, Privaatsak X17, Brooklyn Square, 0075.

(b) vir die doeleindes van stukke wat per hand afgelewer word, Grondvloer, Momentumpark, Nicolsonstraat 105, Brooklyn, Pretoria.

41. **Titel en inwerkingtreding van reëls**

Hierdie reëls heet die Reëls ten opsigte van Varsprodukte-agente, 2005.