



“Creating BUSINESS sense out of BEE”

1 December 2016

To whom it may concern

The following justification for exclusion of mandated investments under the Financial Sector Code is based on an interpretation of that code. There is little guidance when it comes to such interpretations and as such this opinion is delivered in good faith and in keeping with the spirit of the BEE codes of good practice. It is our intention that opinions such as this will contribute meaningfully to the ultimate goal of every code of good practice.

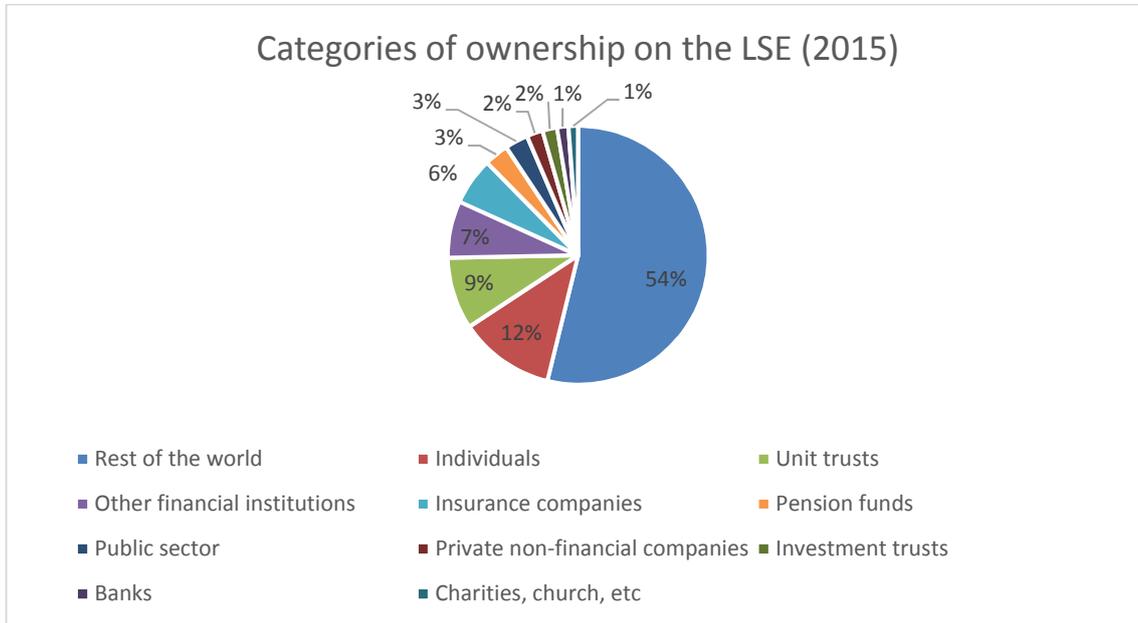
A handwritten signature in black ink, appearing to read 'Paul', is written over a faint, light-colored grid background.

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Investment in the London Stock Exchange¹

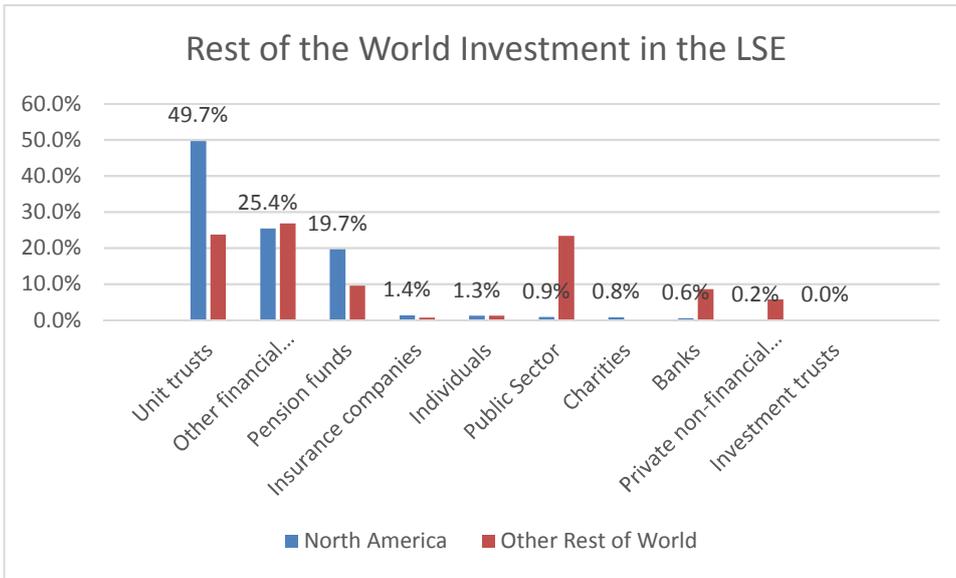
The (UK) Office for National Statistics² (ONS) has listed Ownership of UK Quoted Shares: 2014 as the following.



¹¹ <https://www.ons.gov.uk/economy/investmentpensionsandtrusts/bulletins/ownershipofukquotedshares/2015-09-02>

² <https://www.ons.gov.uk/>

It is significant to understand the types of investments contained in the “Rest of the World” category. The ONS has broken these down as such



The actual figures are

<i>Beneficial owners</i>	<i>North America</i>	<i>Other Rest of World</i>
Unit trusts	49.7%	23.7%
Other financial institutions	25.4%	26.8%
Pension funds	19.7%	9.6%
Insurance companies	1.4%	0.7%
Individuals	1.3%	1.3%
Public Sector	0.9%	23.4%
Charities	0.8%	0.1%
Banks	0.6%	8.6%
Private non-financial companies	0.2%	5.8%
Investment trusts	0.0%	0.0%

Financial Sector Code exclusion of mandated investments

Exclusion (or inclusion) of mandated investments is discussed in CODE SERIES FS100: STATEMENT 100: THE GENERAL PRINCIPLES FOR MEASURING OWNERSHIP³. The pertinent paragraphs are the following

3.4.4 When determining ownership in a Measured Entity, rights of ownership of Mandated Investments may be excluded. The maximum percentage of the ownership of any Measured Entity that may be so excluded is 40%. Mandated Investments are those investments as defined in Schedule 1 of the CoGP as per Gazette No. 29617⁴.

3.4.5 Entities that elect not to exclude Mandated Investments when entitled to do so may either treat all of that ownership as non-black or obtain a competent person's report estimating the extent of black rights of ownership measurable in the Measured Entity and originating from that Mandated Investment.

3.4.6 A Measured Entity cannot selectively include or exclude Mandated Investments and an election to exclude one Mandated Investment is an election to exclude all Mandated Investments and vice versa.

Marrying the term “mandated investments” to similar investments on foreign stock exchanges

The term “mandated investments” appears to be unique to South Africa. It is defined in Schedule 1 of the 2007 codes of good practice (29617)⁵ as

"Mandated investments" - means any investments made by or through any third party regulated by legislation on behalf of the actual owner of the funds, pursuant to a mandate given by the owner to a third party, which mandate is governed by that legislation. Some examples of domestic mandated investments and the portions of those investments subject to the exclusion principle are contained in Annexe 100A attached to statement 100;

³ FINANCIAL SECTOR CODE FOR BLACK ECONOMIC EMPOWERMENT gazette No.35914

⁴ Note the reference to the 2007 Generic Codes of Good Practice. The specific schedule does not prescribe a definition of types of mandated investments but lists those types as *examples of mandated investments*.

⁵ It is noted at the time of drafting that these codes have been superseded by the Revised BEE Codes of Good Practice. The FSC refers all definition to 29617 and as such is the applicable code.

The use of the word “examples” above is an indication that mandated investments are not limited to those contained in Annexe 100A. It is our considered opinion that the broad definition must include any mandated investment (or institutional owner) on any other bourse in any other country.

Establishing what a mandated investment would be on the London Stock Exchange.

The most optimal way of linking mandated investments to the LSE is to take a look at definitions contained on the LSE itself

Definition of institutional ownership as per the London Stock Exchange⁶

Defined as

A financial institution, such as a bank, pension fund, mutual fund and insurance company, that invests large amounts of money in securities, commodities and foreign exchange markets, on its own behalf or on the behalf of its customers.

Definition of fund ownership as per the London Stock Exchange⁷

Defined as

A company or fund that gathers capital from a number of investors to create a pool of money that is then re-invested into stocks, bonds and other assets. There are two basic kinds of investment companies or funds: open-ended, also called mutual funds or unit trusts; and closed-end, also called investment trusts.

⁶ <https://markets.ft.com/data/lexicon/term/institutional-investor>

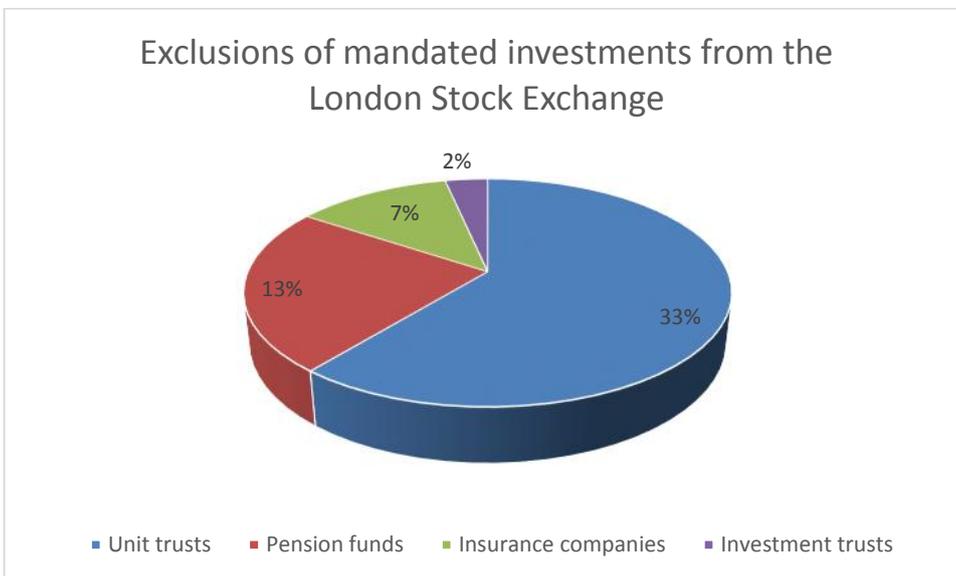
⁷ <https://markets.ft.com/data/lexicon/term/investment-company-or-investment-fund>

Permissible exclusions of mandated investments on the London Stock Exchange

The ONS lists the categories of investors on the LSE as

Unit trusts
Other financial institutions
Pension funds
Insurance companies
Individuals
Public Sector
Charities
Banks
Private non-financial companies
Investment trusts

We believe that mandated investments in the form of institutional investments of fund investments (with reference to Annexe 100A) would be the following; Unit trusts, Pension funds, Insurance companies and Investment trusts. Based on the information the Office of National Statistics has provided, excluded mandated investments contribute the following the LSE.



The total exclusion amounts to 54% which exceeds the target of the 40% exclusion.