

**IN THE PROCEEDINGS BEFORE THE ENFORCEMENT COMMITTEE
ESTABLISHED IN TERMS OF SECTION 97 OF THE SECURITIES
SERVICES ACT, 36 OF 2004**

CASE NO: 10/2008

In the Matter of:

THE DIRECTORATE OF MARKET ABUSE

The Referring Party

and

VAN ZYL, JOHANNES ALBERTUS

Respondent

DETERMINATION OF THE ENFORCEMENT COMMITTEE

TAKING NOTE of the admissions in terms of section 103(1) of the Securities Services Act, No 36 of 2004, signed on 25 November 2008, and having regard thereto that a penalty of R50 000 was recorded as being acceptable, the Panel imposes a penalty of R50 000 on the Respondent.

The Panel makes no order regarding costs.

Signed at **PRETORIA** on the **27TH** day of **NOVEMBER 2008**.


.....
Chairperson
C F Eloff

**IN THE PROCEEDINGS BEFORE THE ENFORCEMENT COMMITTEE
ESTABLISHED IN TERMS OF SECTION 97 OF THE SECURITIES
SERVICES ACT, 36 OF 2004**

CASE NO: 10/2008

In the matter of:

THE DIRECTORATE OF MARKET ABUSE

The Referring Party

and

10 **VAN ZYL, JOHANNES ALBERTUS**

Respondent

DETERMINATION OF THE ENFORCEMENT COMMITTEE

Before The Hon Mr Justice C F Eloff, E A Moolla, R G Cottrell, Ms C Dlepu, Ms C Maynard, A Mazwai and H M S Msimang

The Hon Mr Justice C F Eloff: The respondent is charged by the
20 Directorate of Market Abuse, care of the Financial Services Board, with
the performance of manipulative, improper and deceptive trading
practices, as envisaged by Section 75 of the Security Services Act 36 of
2004.

The essence of the charge is that he concluded four transactions in
respect of Sunflower Seeds, which involved no change in the beneficial
ownership of the security at prices substantially higher than automatic
transactions at the time indicated. He thereby created false impressions of
the current market price. The respondent admitted the essential

components of the charge, sets out mitigating factors and tenders an administrative penalty of R50 000.00. The Executive Director of the DMA records that he has no objection to the imposition of a penalty of that order.

It must be confessed that this committee had serious misgivings about the fitness of the suggested penalty. A serious factor, which should also have been considered, was the social consequences of this type of misdemeanour, which affects large numbers of people who can ill afford such losses. That hopefully was considered by the DMA. We have the impression that what happened here was a sort of settlement of a rather complex charge and there were pros and cons and this is really in the nature of a settlement figure.

It has to be viewed on that basis. The committee considers that the guilt of the respondent was fully established and it imposes a penalty of R50 000.00, no order as to costs. The penalty is payable by 31 December 2008. Thank you.

20



CHAIRPERSON

27 November 2008

**IN THE PROCEEDINGS BEFORE THE ENFORCEMENT COMMITTEE
ESTABLISHED IN TERMS OF SECTION 97 OF THE SECURITIES
SERVICES ACT, ACT 36 OF 2004**

CASE NO: 10/2008

In the matter of:

THE DIRECTORATE OF MARKET ABUSE

The Referring Party

and

VAN ZYL, JOHANNES ALBERTUS

Respondent

**ADMISSIONS BY THE RESPONDENTS IN TERMS OF SECTION 103(1) OF
THE SECURITIES SERVICES ACT, ACT 36 OF 2004**

1. The Respondent confirms that he has read and understood the Particulars of Contravention pertaining to this matter. Consequently, the Respondent makes the following admissions:

1.1. The conduct of the Respondent as described herein took place within the Republic of South Africa. The Honorable Enforcement Committee has jurisdiction to consider this matter.

1.2. Sunflower seeds futures contracts ("sunflower contracts") are listed securities as envisaged by section 75(1) read with section 1 of the Securities Services Act, Act 36 of 2004 ("the Act").



- 1.3. Sunflower contracts are listed on the South African Futures Exchange ("SAFEX") which is a division of the JSE Limited. The JSE is a regulated market as envisaged by section 75(1) read with section 1 of the Act.
- 1.4. The Respondent admits that he concluded the four transactions set out in **Table A** in the Particulars of Contravention. In the said transactions, he entered both the purchasing and sale orders in respect of sunflower contracts.
- 1.5. The aforesaid transactions did not result in a change in the beneficial ownership of the sunflower contracts.
- 1.6. The Respondent acknowledges that his actions constituted a manipulative, improper, false or deceptive trading practice as envisaged by section 75(3)(a) of the Act.
- 1.7. In all four instances, he concluded the said transactions at prices that were significantly higher than the last automated trading prices at the time of the transactions.
- 1.8. The transactions mentioned in paragraph 1.6 were executed with the intention of creating a false or deceptive appearance of active public trading and/or an artificial market price for sunflower contracts.



1.9. The Respondent admits that his actions mentioned in paragraph 1.6 above constituted a manipulative, improper, false or deceptive trading practice as envisaged by section 75(3)(b) of the Act.

1.10. The Respondent admits that his actions were unlawful. His actions constituted a contravention of section 75(1) read with section 75(3)(a) and 75(3)(b) of the Act.

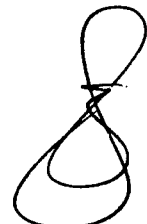
2. Mitigating Factors

2.1. The Respondent respectfully requests that the Enforcement Committee take the following mitigating factors into consideration when deciding on a penalty:

2.1.1. The Respondent has cooperated with the investigators in this matter. He admits the wrongfulness of his actions and is remorseful for his conduct.

2.1.2. On 24 January 2008 (when the contracts expired) the Respondent incurred a loss of approximately R1.3 million from his positions in the sunflower contracts.

2.1.3. The Respondent has never been found guilty of a similar offence.



3. The proposed Penalty

3.1. The Respondent hereby tenders, in terms of section 103(1) of the Act, to pay a penalty of R50 000.

SIGNED AT PRETORIA on the 25th day of NOVEMBER 2008.


RESPONDENT
MR JOHANNES ALBERTUS VAN ZYL