

**IN THE PROCEEDINGS BEFORE THE ENFORCEMENT
COMMITTEE ESTABLISHED IN TERMS OF SECTION 10(3) OF
THE FINANCIAL SERVICES BOARD ACT, NO 97 OF 1990**

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CASE NO: **16/2010**

In the matter of:

FINANCIAL SERVICES BOARD

First Applicant

10 **THE DIRECTORATE OF MARKET ABUSE**

Second Applicant

and

GERHARDT VAN NIEKERK

Respondent

15 **DETERMINATION IN TERMS OF SECTION 6B(7) READ WITH
SECTION 6D(2) OF THE FINANCIAL INSTITUTIONS
(INVESTMENT OF FUNDS) ACT, NO 28 OF 2001**

20 The Applicants are the Financial Services Board (FSB) and the
Directorate of Market Abuse (DMA). The DMA exercises the powers
of the FSB to investigate alleged market abuse offences in terms of
section 83(1)(c) of the Securities Services Act, No 36 of 2004 (the
Act) and may institute enforcement proceedings.

25 The Respondent is Gerhardt van Niekerk, an adult male, who is
employed by Sasfin Advisory Services (Pty) Ltd.

On 26 May 2010 Mr van Niekerk instructed his broker to purchase
shares in Mercantile Bank Holdings Limited ("MTL").

The JSE Limited is a licensed exchange and a regulated market.

MTL is a public company whose shares are listed on the JSE.

The Applicants considered an investigation report dated 12 October
5 2010 and decided to refer the matter to the Enforcement Committee
on the basis that the Respondent contravened sections 73(2)(a) and
72(3)(a) of the Securities Services Act, No 36 of 2004 (the Act).

The Applicants further recommended that Respondent be ordered to
pay the profit of R4000.00 made together with a penalty equal to 3
10 times the profit made.

Sections 73(2)(a) 73(3)(a) read as follows:

73. Offences

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Insider trading

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(2) (a) An insider who knows that he or she has inside
information and who deals, directly or indirectly, for any other
person in the securities listed on a regulated market to which the
inside information relates or which are likely to be affected by it
commits an offence.

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(3) (a) An insider who knows that he or she has inside
information and who discloses the inside information to another
person commits an offence.

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The details of the contraventions are as follows:

5 Mrs J Medalie mentioned a rumour of a possible merger between Sasfin Bank Limited ("Sasfin") and MTL to van Niekerk between 13h00 and 14h00 on 26 May 2010;

Van Niekerk told Medalie that he would tell her if he found out whether the rumour was true or not;

10 Later in the day van Niekerk went to the office of the CEO of MTL, Mr G Came, and asked him if he should buy Mercantile and short Sasfin. Came's reply was "Is it out?";

15 Van Niekerk conceded to the investigation team that he understood Came's words to refer to a SENS announcement which would be made regarding the merger. He further conceded that he knew that Came was an insider as Came was in a senior management position and would have been involved in any merger negotiations;

20 The information regarding a possible merger between Sasfin and MTL was non public information that was likely to have had a material effect on the share prices of Sasfin and MTL once it was made public;

25

On leaving Came's office van Niekerk nodded his head to Medalie and she understood this to mean that the rumour about the merger was true. She however did not purchase any MTL shares;

5

Van Niekerk then went back to his office and placed an order with his broker at 15h04 to buy MTL shares on the share trading account of his mother in law to a value of R100 000 "today or tomorrow";

10

The broker managed to purchase 198 800 MTL shares on 26 May 2010;

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Van Niekerk's actions therefore constitute contraventions of sections 73(2)(a) and 72(3)(a) of the Act.

The parties filed a Memorandum of Agreement, a copy of which is annexed hereto and marked as annexure "A".

20 With due consideration of the investigation report and other documents placed before the Enforcement Committee and in terms of section 6B(7)(b) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001,

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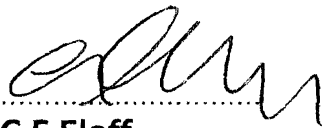
the Enforcement Committee hereby makes the following order:

1. Respondent is found guilty of contravening sections 73(2)(a) and 72(3)(a) of the Act.
- 5 2. Respondent is ordered to pay an administrative penalty of R16000 to the Applicants on or before 15 February 2011.
3. The remaining terms and conditions of the Memorandum of Agreement (Annexure "A" hereto) are incorporated and made an Order of the Enforcement Committee.

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Signed at ~~Pretoria~~ on the ~~19th~~ day of **JANUARY 2011**.

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C F Eloff
Chairperson of the Enforcement Committee

MEMORANDUM OF AGREEMENT

Entered into between:

FINANCIAL SERVICES BOARD

(Hereinafter referred to as the "FSB")

and

GERHARD VAN NIEKERK

Id no. 6709035015080

(Hereinafter referred to as "Mr Van Niekerk")

1. WHEREAS:

1.1. Mr Van Niekerk purchased 198 800 Mercantile Bank Holdings Limited shares on 26 May 2010 whilst in possession of inside information in respect of Mercantile Bank Holdings Limited;

1.2. Mr Van Niekerk therefore contravened section 73 of the Securities Services Act, 36 of 2004 (the Act) and has admitted to such contravention; and



1.3 the Directorate of Market Abuse on 24 November 2010 found that van Niekerk contravened section 73 and directed that the matter should be referred to the Enforcement Committee for the imposition of an administrative penalty in an amount of R16 000; and

1.4 Mr Van Niekerk has agreed to pay the administrative penalty in an amount of R16 000;

1.5 The parties wish to request the Enforcement Committee to incorporate this agreement in any order which it may make;

NOW THEREFORE the parties agree as follows:

2 This agreement is subject to approval by the Enforcement Committee and the parties specifically record that they are aware that the Enforcement Committee may not accept the terms of this agreement. In such event this agreement will be null and void and neither party will have any rights or obligations in terms hereof.

3 Mr Van Niekerk agrees to pay the amount of R16 000 to the FSB on or before 3 December 2010,

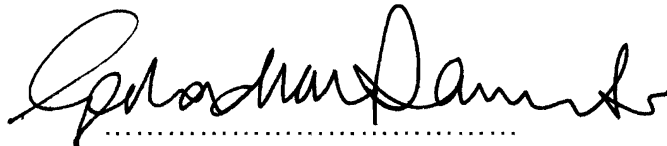
Handwritten signature and initials in black ink, located at the bottom right of the page. The signature appears to be 'G. A.' followed by a small '2'.

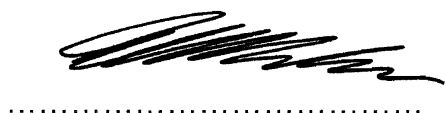
- 4 If Mr Van Niekerk does not comply with the terms of this agreement and it is necessary for the FSB to proceed with legal proceedings, Mr Van Niekerk herewith consents to pay all legal costs to the FSB on the Attorney and Client scale in terms of the High Court Rules inclusive of collection commission and Value Added Tax.
- 5 No leniency or postponement given by the FSB to Mr Van Niekerk or any amendment to the terms and conditions of this agreement will be binding unless such postponement, leniency or amendment is reduced to writing and signed by the parties.
- 6 Any receipt of a payment by the FSB after the due date shall be without prejudice to any of the rights of the FSB.
- 7 Mr Van Niekerk hereby renounces all benefits from the exceptions *non numeratae pecuniae, non cause debiti, revision of accounts, errore calculi*, and, where applicable *de duobus vel pluribus reis debendi* and declares that he fully understands the meaning, force and effect of these renunciations.
- 8 This Agreement shall not be a novation of the cause or causes of action in terms whereof Mr Van Niekerk must pay the administrative penalty.



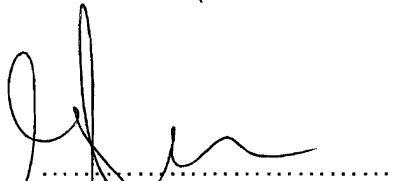
9 This agreement constitutes the whole agreement between the parties
in respect of payment of the penalty.

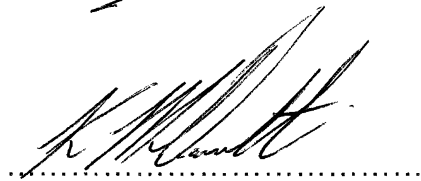
Signed at PRETORIA on the 12th day of January 2011 on behalf of the
FSB.


.....
G van Deventer


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Witness

Signed at Northern on the 3. day of January 2011 on behalf of the
FSB.


.....
G Van Niekerk


.....
Witness

