

**IN THE ENFORCEMENT COMMITTEE ESTABLISHED IN TERMS OF
SECTION 10(3), READ WITH SECTION 10A OF THE FINANCIAL
SERVICES BOARD ACT, 97 OF 1990**

CASE NO: **27/2015**

In the matter of:

THE DIRECTORATE OF MARKET ABUSE

First Applicant

THE FINANCIAL SERVICES BOARD

Second Applicant

GRANT CHITTENDEN

Respondent

ORDER

WITH DUE CONSIDERATION to the settlement agreement (attached marked annexure "A") in terms of section 6B (7) (a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001, I hereby determine that the Respondent contravened section 76 (1) (a) and (b) of the Securities Services Act, 36 of 2004 and impose a penalty of R300 000 (three hundred thousand rand).

I make no order as to costs.

The remaining terms and conditions of the settlement agreement are incorporated and made an order of the Enforcement Committee.

Signed at **PRETORIA** on the 21st day of **JULY 2015**.


.....
C F Eloff
Chairperson of the Enforcement Committee

**IN THE PROCEEDINGS BEFORE THE ENFORCEMENT COMMITTEE
ESTABLISHED IN TERMS OF SECTION 10(1), READ WITH SECTION
10A OF THE FINANCIAL SERVICES BOARD ACT, NO. 97 OF 1990**

CASE NO.:

In the matter between:

DIRECTORATE OF MARKET ABUSE

First Applicant

FINANCIAL SERVICES BOARD

Second Applicant

And

GRANT CHITTENDEN

Respondent

**SETTLEMENT AGREEMENT IN TERMS OF SECTION 6B(7)(a) OF THE
FINANCIAL INSTITUTIONS (PROTECTION OF FUNDS) ACT 28 OF 2001**

1. The Directorate of Market Abuse ("DMA") investigated certain publications in the name of Blue Financial Services Ltd ("Blue") that occurred during the period from 23 April 2009 to 21 June 2010 in terms of section 82(2)(a) of the Securities Services Act, No. 36 of 2004 ("SSA").
2. The DMA resolved to refer certain matters to the Enforcement Committee of the Financial Services Board ("FSB") in terms of section 6A(2) of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001 ("FI Act").
3. The respondent wishes for the matter to be dealt with by way of an agreed penalty.
4. Now therefore the parties agree as follows:



5. **THE PARTIES TO THE AGREEMENT**

5.1 The first applicant is the DMA, a committee of the FSB established in terms of section 83(1) of the SSA. The DMA exercises the powers of the FSB to investigate any matter relating to a market abuse offence.

5.2 The second applicant is the FSB, a juristic person established in terms of section 2 of the Financial Services Board Act, No. 97 of 1990. The functions of the FSB are *inter alia* to supervise and enforce compliance with the laws relating to financial institutions and the provision of financial services.

5.3 The first and second applicants are represented by Mr Cuthbert King Chanetsa, the Deputy Executive Officer: Investment Institutions, at the FSB and the Deputy Chairperson of the DMA.

5.4 The respondent is Mr Grant Chittenden, an adult male who was employed as a Director, and the Chief Financial Officer, of Blue during the period from 1 June 2008 to 17 July 2009.

6. **THE PUBLICATIONS**

6.1 During the aforementioned period the respondent was *inter alia* involved in the publications mentioned in paragraphs 6.2, 6.3 and 6.4 hereunder:

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6.2 The trading statement that was published on 23 April 2009

6.2.1 In this document it was stated that:

"for the financial year ended 27 February 2009, the Company expects earnings per share (EPS) and headline earnings per share (HEPS) to be between 100% and 120% higher and 35% and 55% higher respectively than the comparative figures for the previous corresponding financial year ended 29 February 2008... The differential in EPS and HEPS is primarily attributable to profit on sale of shares arising from the creation of Blue Intercontinental Microfinance Bank, Blue's Nigeria operation... During the financial year Blue's loan book grew by 216% from R482 million to R1.521. billion..."

6.2.2 Based on the percentages provided in the trading statement in respect of the increase in the EPS and HEPS, the market would have expected the Nett Profit After Tax ('NPAT') to be in a range of between R145, 710,118 to R160, 831,130.


6.2.3 The following was also published in the trading statement:

"During the financial year Blue's loan book grew by 216% from R482 million to R1.521 billion. This growth is attributable to acquisition activity, expansion into new countries in Africa and organic growth of existing operations. Due to the timing of these activities, the full year effect thereof is not reflected in the current financial year's earnings. ..."

6.3 The further trading statement that was published on 21 May 2009

6.3.1 In the further trading statement it was stated that the range of EPS and HEPS would be lower than previously reported :

- EPS would now be 50% to 70% higher than that reported in the



previous year (as opposed to the 100% and 120% higher estimate provided in the trading statement that was published on 23 April 2009.) and

- the HEPS would be 0% to 10% higher than that reported in the prior year (as opposed to the 35% and 55% higher estimate provided in the trading statement that was published on 23 April 2009)

6.3.2 This new lower estimate was equivalent to a NPAT in the range between R105,314,841 to R120,435,853 as opposed to the NPAT guidance of between R145,710,118 to R160,831,130 as previously provided in the trading statement that was published on 23 April 2009.

6.4 *The reviewed provisional condensed results for the year ended 28 February 2009 that was published on 21 May 2009*

6.4.1 In this publication it was stated that NPAT was an amount of R110,864,961.

7. **ADMISSIONS**

7.1. The respondent admits that certain information that he communicated or failed to communicate to the Audit Committee, and which was subsequently contained or omitted from the aforementioned three publications, had a material impact on the correctness of these publications.



- 7.2. The respondent admits that his actions and omissions constitute contraventions of Section 76(1)(a) and (b) of the SSA.
- 7.3. The details of the contraventions relating to the trading statement that was published on 23 April 2009 are set out in more detail in **paragraph 8** hereunder.
- 7.4. The details of the contraventions relating to the revised trading statement and the reviewed results that were published on 21 May 2009 are set out in more detail in **paragraph 9** hereunder.

8. **The TRADING STATEMENT published on 23 April 2009**

The respondent admits that he contravened section 76(1)(b) of the SSA with regard to the 23 April 2009 trading statement for the reasons mentioned in paragraphs 8.1 to 8.3 hereunder.

8.1 ***Share Incentive Scheme***

- 8.1.1 In his capacity as Chief Financial Officer of Blue, the respondent was responsible for the proper transactional and financial reporting and compliance by Blue.
- 8.1.2 The respondent failed to appreciate the costs of the employee share incentive scheme and did not apply the appropriate accounting standards.

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- 8.1.3 On 21 April 2009 he presented the Audit Committee with financial statements which did not include the financial implications of the share incentive scheme.
- 8.1.4 The members of the Audit Committee relied on the respondent's presentations and accepted his advice that the financial statements were a true reflection of Blue's financial position.
- 8.1.5 Based on the respondent's presentations, the Audit Committee authorised the respondent to publish a trading statement that did not make any provision for the costs related to the employee share incentive scheme. Based on the approval of the Audit Committee, the respondent instructed the designated advisor to publish same on 23 April 2009.
- 8.1.6 The omission of the costs related to the share incentive scheme from the financial statements on which the trading statement published on 23 April 2009 was based, led to materially overstated NPAT, EPS and HEPS in the trading statement.
- 8.1.7 The effect that the omission had on the NPAT, EPS and HEPS which was implied in the numbers that were published to the market on 23 April 2009 were as follows:



8.1.7.1 NPAT was overstated by an amount of R10, 787, 064. (The bottom range of the published numbers was overstated by 7.4% and the top range by 6.71%).

8.1.7.2 EPS and HEPS were overstated by approximately 2.09cps. In percentage terms, these are 7.14% and 12.55% overstatements of the bottom range of the EPS and HEPS respectively as published on 23 April 2009. This equated to a 6.49% and 10.93% overstatement of the top range of the EPS and HEPS respectively.

8.2 *Tax implications of a transaction in Nigeria*

8.2.1 In his capacity as the Chief Financial Officer of Blue, the respondent was responsible for proper transactional and financial reporting and compliance by Blue.

8.2.2 As at 21 April 2009, he was not yet aware of any tax liability and had not yet received an opinion from the external auditors regarding the possible tax implications of the transaction in Nigeria.

8.2.3 Despite not receiving clarification from the external auditors, he presented the Audit Committee with financial statements on 21 April 2009 for purposes of considering whether a trading statement should be published.



- 8.2.4 In his presentation to the Audit Committee he failed and/or neglected to advise the Audit Committee that the matter was still under discussion with the external auditors and failed to advise the Audit Committee of the tax implications of the transaction.
- 8.2.5 The members of the Audit Committee relied on the respondent's presentations and accepted his advice that the financial statements were a true reflection of Blue's financial position.
- 8.2.6 Based on the respondent's presentations, the Audit Committee authorised the respondent to publish a trading statement that did not make any provision for the tax payable in respect of the Nigeria transaction. Based on the approval of the Audit Committee, the respondent instructed the designated advisor to publish same on 23 April 2009.
- 8.2.7 The omission of the tax payable on the Nigeria transaction from the trading statement published on 23 April 2009 led to materially overstated NPAT and EPS, namely
- 8.2.7.1 NPAT was overstated by an amount of R13 104 536. (The bottom range of the published numbers was overstated by 8.99% and the top range by 8.15%).).
- 8.2.7.2 EPS was overstated by approximately 2.54 cps; (In percentage terms this is an 8.67% and a 7.89% overstatement of the bottom range and top range of the EPS in the published numbers respectively.)



8.3 Loan Book

8.3.1 In his capacity as Chief Financial Officer of Blue, the respondent was responsible for proper transactional and financial reporting and compliance by Blue.

8.3.2 Prior to approval of publication of the 23 April 2009 trading statement, the respondent was aware thereof that Blue's loan book may be overstated (the exact extent of which he was uncertain).

8.3.3 Notwithstanding the fact that the respondent was aware thereof that the loan book was overstated, he presented financial statements to the Audit Committee on 21 April 2009 that included the overstated amount for purposes of considering whether a trading statement should be published.

8.3.4 In his presentation to the Audit Committee, he failed and/or neglected to advise the Audit Committee of the problems with the loan book conversion process, or that the loan book may be overstated.

8.3.5 The members of the Audit Committee relied on the respondent's presentations and accepted his advice that the financial statements were a true reflection of Blue's financial position.

8.3.6 Based on the respondent's presentations, the Audit Committee

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authorised the respondent to publish a trading statement that included the overstated amount in respect of Blue's loan book. Based on the approval of the Audit Committee, the respondent instructed the designated advisor to publish same on 23 April 2009.

8.3.7 The incorrect value of the loan book as included in the 23 April 2009 trading statement led thereto that the implied numbers that were published to the market for NPAT, EPS, HEPS and assets were materially overstated as follows:

8.3.7.1 NPAT was overstated by an amount of R28 879 440 (which is approximately 39.44%) in the 23 April 2009 trading statement;

8.3.7.2 EPS (15.92 cps) and HEPS (12.73 cps) were overstated by approximately 5.66cps (which is approximately 35.55% and 44.46% respectively) in the 23 April 2009 trading statement;

8.3.7.3 Assets were overstated by an amount of R37 244 656.

8.4 ***The statement about the growth in the loan book***

8.4.1 The respondent further admits that he contravened section 76(1)(a) of the SSA in that under the circumstances mentioned in paragraph 8.3. above, he caused the trading statement to be published on 23 April 2009 with the following materially incorrect statement in respect of Blue's loan book:

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"During the financial year Blue's loan book grew by 216% from R482 million to R1.521 billion. This growth is attributable to acquisition activity, expansion into new countries in Africa and organic growth of existing operations. Due to the timing of these activities, the full year effect thereof is not reflected in the current financial year's earnings. ..."

9. **The REVISED TRADING STATEMENT and the REVIEWED RESULTS that were published on 21 May 2009**

- 9.1 The respondent admits that he contravened section 76(1)(a) of the SSA as a result of him not advising the Audit Committee of the overstated loan book, as well as recklessly publishing the Reviewed Results and the Revised Trading Statement on 21 May 2009 that contained overstated values for Blue's loan book:

Loan book

- 9.1.1 During the period between 21 April 2009 and 21 May 2009 the respondent obtained greater clarity regarding the quantum of the overstatement of Blue's loan book.
- 9.1.2 Notwithstanding being aware thereof that the loan book was materially overstated, he did not advise the Board, nor the Audit Committee nor the external auditors of this fact.
- 9.1.3 The members of the Audit Committee relied on the respondent's presentations and accepted his advice that the financial statements presented to them were a true reflection of Blue's financial position in



circumstances where they were not as a result of the overstated loan book.

9.1.4 Based on the respondent's recommendations, the Audit Committee approved publication of the 21 May 2009 Reviewed Results and the Revised Trading Statement which contained the overstated numbers in respect of the loan book. The Respondent also approved publication of the aforementioned documents.

9.1.5 The material overstatement in respect of the value of Blue's loan book was thus included in the results published in the 21 May 2009 Revised Trading Statement, as well as in the Reviewed Results published on the same day.

9.1.6 The subsequent restatement of Blue's results for the year ended 28 February 2009 that was necessitated by the overstatement of the loan book, was a decrease in the gross value of Blue's loan book (by R37.2 million) and a decrease in Blue's interest income (by R40.3 million).

10. **MITIGATING CIRCUMSTANCES**

10.1 The parties record that the following constitute mitigating circumstances which have been taken into consideration in this matter:

10.1.1 The respondent assisted both the first and second applicants in their



investigation of the matter and was forthcoming, frank and open with his disclosures relating to his contraventions.

10.1.2 The respondent voluntarily attended no less than two interrogations at the FSB to assist the FSB in its investigation into Blue's published financial results.

10.1.3 At the time when he contravened Section 76 of the SSA, the respondent was under severe strain and had been in the position of the Chief Financial Officer at Blue for a period of only ten months, and had never acted as a financial manager at any prior stage in his career.

10.1.4 The respondent did not profit in any manner as a result of the relevant publications.

10.1.5 As a result of the extensive media coverage and the respondent's subsequent resignation the respondent's reputation was severely tarnished and he remained unemployed for a period of approximately two and a half years.

10.1.6 The respondent has never appeared before the Enforcement Committee and has never been found to have breached any provisions of the SSA or any other Act administered by the FSB.

10.1.7 The respondent has openly and frankly admitted the contravention, and

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has not wasted the Enforcement Committee's resources on a prolonged contested case.

- 10.1.8 The respondent has expressed remorse and embarrassment for having contravened the SSA.

11. **THE AGREED PENALTIES**

- 11.1 The respondent hereby tenders to pay a penalty of R300 000. The applicants have accepted the penalty offered by the respondent.

- 11.2 Wherefore the parties humbly request that the Honourable Enforcement Committee make the agreement an order as envisaged in section 6B(7)(b) of the FI Act.

12. **OTHER CONDITIONS**

- 12.1 The parties acknowledge that this agreement is subject to the approval of the Enforcement Committee and the parties further specifically record that they are aware of the possibility that the Enforcement Committee may not accept the terms of this agreement. In such an event this agreement will be null and void and neither party will have any rights or obligations in terms hereof.

- 12.2 Should the Enforcement Committee approve the settlement, the

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Enforcement Committee decision will replace this agreement.

- 12.3 No leniency or postponement given by the DMA or the FSB to the respondent 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.
- 12.4 The agreement constitutes the whole agreement between the parties in respect of the offer to pay an administrative penalty.
- 12.5 The parties select the addresses below as their *domicilium citandi et executandi* for the purposes of service of the Enforcement Committee order and for any notice or pleading related to a breach of this agreement:



The Directorate of Market Abuse:
c/o The Financial Services Board
Block B, Riverwalk Office Park
41 Matroosberg Road
Ashlea Gardens
Pretoria

The Respondent:
20/4 Mafuyane Street
Pretorius Park
Pretoria


SIGNED AT PRETORIA ON THIS ^{29th}..... DAY OF JUNE 2015



FOR AND ON BEHALF OF THE REFERRING PARTIES

SIGNED AT PRETORIA ON THIS5..... DAY OF JUNE 2015



GRANT CHITTENDEN
THE RESPONDENT

