CHAIRPERSON: Good afternoon ladies and gentlemen. Thank you for the indulgence. It is a resolve of the committee to deliver a brief judgement and, if necessary, the judgement delivered presently will be supplemented. In determining an appropriate administrative penalty, the approach of the committee is to have regard to the following factors:

(1), the personal circumstances of the respondent, which will be alluded to in the latter part of this judgement; (2) the circumstances surrounding the commission of the offending conduct; (3) the interest of the financial markets.

Counsel for the respondent urged us to have regard to Section 6D of the Financial Institutions Act as a starting point as well as to the provisions of Section 82 of the Financial Markets Act, which enjoins the Enforcement Committee to have regard to the following prescriptions. Section 6A reads as follows and I quote subsection 1(a): *"Despite anything to the contrary and any other law, if the Registrar is of the opinion that a person has contravened a provision of a law in respect of which the Registrar is not authorised to impose a penalty or a fine, the Registrar may refer the alleged contravention to the Enforcement Committee".* Section 6(a)(ii) reads as follows and I quote *"the Directorate may, after an investigation carried out by the*

Directorate under Chapter 10 of the Financial Markets Act 2012, refer an alleged contravention to the Enforcement Committee".

Briefly Section 6D(iii) refers to the following factors, either in mitigation or aggravation of an appropriate sanction. This section adverts to five factors. One is the duration of the offending conduct. In this case it is common cause that the actual trade was a singular trade and the conduct spanned over two days, essentially starting off on the 15th of May 2015 and the response of the market to the shares of Coal on the 18th of May 2015. To that extent the issue of duration as adverted to in the legislation is a mitigating factor.

Secondly, the issue of loss or damages – this element or component of the imposition of a sanction will be dealt with in detail in the latter part of the judgement. Basically the initial calculation was a profit of approximately R44 000.00.

Another factor of the five factors is whether he had failed to comply with any law of a fiduciary duty. There is no evidence before the Enforcement Committee that this is a case in respect of the respondent, nor is there any evidence on behalf of the applicants to this effect. Item 4 of the prescriptions is whether any fine have been imposed previously. There is no evidence before us that any fine was imposed on the respondent previously and we proceed on the premise that, that is the position. Item 5 is whether there was co-operation and

the degree of co-operation with the applicants and the Enforcement Committee.

At the commencement of the enquiry, Ms Harban addressed the Enforcement Committee to give context to this matter in that notwithstanding the longstanding negotiations between the parties, there was no agreement on the issues of whether the element of subjectivity or the element of objectivity would be the defining test in respect of the culpability of the respondent, which applies both in respect of the issue of the merits of the matter, in other words, to determine the question of liability as well as on the issue of the imposition of an appropriate sanction.

As indicated earlier on, we will deal with the issue of the personal circumstances of the respondent towards the latter part of this judgement. Turning to the circumstances surrounding the contravention in question, we find as a matter of fact the following: The respondent was an insider, but also a primary insider. Being a member of the executive committee of Coal, he was also involved in the Makhado Project for four years, including in part when he was the chief operating officer of Coal. He was notified by the CEO that he was not permitted to trade in Coal shares until the 18th of May 2015; further that he was aware of the company's insider trading policy, which was circulated to all staff members on numerous occasions and

to which circulars of the actual trading policy of Coal, the insider trading policy of Coal was attached and sent via e-mail.

Viewed in a conspectus, the respondent's conduct has been less than frank and often disingenuous. The narrative to this matter is as follows and the committee has found this as a matter of fact; that during May 2015 the respondent, at all relevant times, was the COO of Coal as alluded to already and worked for approximately 4 years on the Coal's bid to obtain the mining rights from the Department of Mineral Resources. The rights would enable Coal to conduct mining in respect of the company's Makhado Project.

On the 13th of March 2015 Coal published an announcement on SENS on the progress that had been made to obtain Makhado mining rights. Based on that announcement, it seemed that the approval of Coal's application to obtain the mining rights was imminent. On the 15th of May the Department of Mineral Resources confirmed that the Makhado mining rights were granted to Coal. On the 15th of May 2015 the respondent was fully aware of the granting of the aforementioned mining rights before these details were released to the general public. The respondent was also aware that an announcement regarding the granting of the mining rights was to be published on SENS during the morning of the 18th of May 2015.

Due to the planned SENS announcement, the respondent was specifically instructed by the CEO only to buy Coal shares on the 18th of May, after the disclosure of the information to the market, pursuant to an enquiry addressed by the respondent himself to the CEO as to whether he could purchase Coal shares.

On the 15th of May 2015 at 13:44 the respondent bought 117 000 Coal shares, mostly at 84c per share and paid an amount of R98 262.00. When he traded, he was well aware that Coal had been granted the mining rights and that this information was unpublished.

In order for there to be a contravention of Section 78A, it is required that the insider must know that he had inside information and that the insider must know that he was dealing directly or indirectly with the relevant authorities. The parties attempted to reach an agreement about whether there had been a contravention of this section. In paragraph 1.2 of the respondent's Heads of Argument the respondent accepts that viewed objectively he contravened Section 78(i)(a) of the Financial Services Act. What it seems, is that the respondent is asserting, that he did not know subjectively that he had inside information or that he did not know he was dealing.

On page 71 of the record, Mr Brown, the CEO of Coal, stated that Mr Bronn requested permission to buy Coal shares just prior to the 13th of May 2015. The permission was granted at the same time

on condition that he purchased the shares after the release of the announcement concerning the granting of the mining rights on Monday the 18th of May.

Page 25 of the record makes it apparent that there was an urgency that the trade be done before the end of the day, being the 15th of May 2015. The record shows that the respondent, Mr Bronn, asked and, I quote *"will you still be able to purchase some shares or assist me to do that before the end of the day?"* This was a telephonic discussion that he had with a Mr Bell who was a dealer at Thebe. The dealing was done while the broker and the respondent were on the phone together and the broker stated, and I quote *"okay sir, it is confirmed, you bought 117 000 Coal of Africa shares at 84c per share",* to which the respondent replied *"alright, perfect".*

It was the applicant's contention that the respondent knew that he had inside information and also knew that he had dealt in the securities before the release of the SENS announcement on the 18th of May 2015. It was thus the applicant's view that there was a material dispute of fact between the applicant and the respondent; that is the respondent contends that only on an objective basis can it be said that he contravened the section in contrast to the applicant's view that subjectively the respondent knew that he had inside information and that he knew that he dealt in the shares before the 18th of May 2015.

This was the reason for the applicant's assertion that the matter had to be proceed with on a contested basis.

The cogency of this issue and in particular the point regarding the disagreement as to whether the test of objectivity or subjectivity on the part of the respondent was to be accepted, not only plays an important role in the general issue of the principal sanctions to be determined by this committee, but also on the ancillary relief sought by the applicants in this matter.

As indicated as the commencement of the judgement, it is the intention of the committee at this point in time to deliver only a very brief judgement in the matter. Lastly, it is important to record that the Enforcement Committee has in fact taken into account the personal circumstances of the respondent … sorry, if you will just excuse me. My apologies for that.

In his submissions to the Enforcement Committee, the respondent contended the following: That he was the sole breadwinner and supported his wife and children; that he also contributes financially to the support of his elderly mother, being 72 years of age. He has also attached his assets and liabilities. It is evidence that is asset only marginally exceed his liabilities. He further submitted that he has included his tax liability to SARS in the amount of approximately R3 million and attached a document from SARS to

record such evidence and that his legal team is negotiating with SARS as to the payment of the tax debt in instalments.

The issue of the impact of the conduct of the respondent on the financial markets cannot be underestimated, notwithstanding the fact that it was a single trade, we do accept that the respondent has learnt his lesson and it is very unlikely that he would ever be likely to recur in the commission of such offending conduct in the future. However, notwithstanding the miniscule nature of the conduct in question or the magnitude of the conduct in question, every single instance of insider trading has a cumulative effect on the financial markets. It tends not only to distort the integrity of the market, but it also brings the market into disrepute.

South Africa is an emerging economy. It is a country, which is extremely hungry for capital inflows and those who want to bring capital into the country, either in terms of infrastructure spending or in terms of the purchase of marketable or market securities would require certainty that our markets are not lacking in integrity and are subject to instances of conduct of this particular type. The committee has to take this fact into account, although it must also take into account the issue of the proportionality to which there can be no gainsaying.

We concurred that profit is a good starting point. However, we reject the notion that the principle applicable in the calculation of profit should be net profit after taxation and the numerous other imponderables are factored into such calculation. I repeat, we reject that notion and it is our finding that in the calculation of the profit the calculation should be based on gross profit.

In terms of Section 82(i)(b) the maximum penalty referred to is up to R1 million to be adjusted by the Registrar annually to reflect the CPI as published by Statistics South Africa plus three times the amount of the profit made or loss avoided. It was argued on behalf of the respondent that the sanction should be limited to the net profit made by the respondent. I repeat, the Enforcement Committee rejects this view.

We are of the view that the following would be an appropriate administrative penalty, taking into account the cumulative effect of the various components of the entire administrative penalty. (1), the respondent is to pay an administrative penalty by way of a fine of R350 000.00. This amount is not insignificant, nor is it too absurd as contended by the respondent. We also order that the respondent is to pay the cost attendant upon this enquiry, including the cost of the FSB investigation as well as the constitution or empanelment of this Enforcement Committee. In addition, interest is to accrue on the

judgement amount at the rate prescribed from time-to-time in the Prescribed Rate of Interest Act.

MS HARBAN: As this panel pleases.

CHAIRPERSON: That, ladies and gentlemen, is our judgement. Thank you very much. I wish to thank the members of the Directorate of Market Abuse, both the investigators as well as counsel as well as Mr Luderitz who is not present here today or rather this afternoon, as well as yourself, Mr Erasmus, for making your resources and contributions and your learned submissions available to this committee. Without that we would never be able to be fair and to do justice, which we have endeavoured to do at all stages and we thought we have achieved that particular end. Thank you very much. We adjourn.

A D J O U R N M E N T