

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

5

CASE NO: **13/2009**

In the matter of:

**FINANCIAL SERVICES BOARD**

First Applicant

10 **THE DIRECTORATE OF MARKET ABUSE**

Second Applicant

and

**TIMOTHEUS PRETORIUS**

Respondent

15

---

**DETERMINATION IN TERMS OF 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. The Respondent is

25

Timotheus Pretorius, an adult male, who was the sole director and shareholder of Origin SA Limited, which traded as Cortex Derivatives Brokers (Cortex). Cortex held a proprietary share trading account with BOE Stockbrokers (Pty) Limited (BOE).

The JSE Limited is a licensed exchange and a regulated market. Cape Empowerment Trust Limited (Cape Empowerment) and Beige Holdings Limited (Beige) are public companies whose shares are  
5 listed on the Alternative exchange division of the JSE.

The Applicants referred the matter to the Enforcement Committee on the basis that the Respondent contravened section 75(1)(a) of the Securities Services Act, No 36 of 2004 (the Act). Section 75(1)(a)  
10 reads as follows:

*75.(1) No person may-*  
*(a) either for such person's own account or on behalf of another person, directly or indirectly use of knowingly participate in the use*  
15 *of any manipulative, improper, false or deceptive practice of trading in a security listed on a regulated market, which practice creates or might create-*  
*(i) a false or deceptive appearance of the trading activity in connection with; or*  
20 *(ii) an artificial price for, that security;*

The details of the contraventions are set out in the Notice that was filed by the Applicants and read as follows:

25

### **Count 1**

Section 75(1)(a) read with sections 75(2) and/or 75(3)(d) and/or 75(3)(h) and/or 75(3)(i) of the Securities Services Act, No 36 of 2004 ("the Act") in  
30 that:

5 He used or knowingly participated in the use of manipulative,  
improper, false or deceptive trading practices on **20 January 2009**  
when he at 16:14:55 being near the close of market directly or  
indirectly purchased 500 Beige shares at 12 cents per share (cps) on  
behalf of PCS or for his own account.

The primary purpose of this transaction was to change the closing  
price of the Beige share from 11cps to 12cps.

10 This transaction created, or might have created a false or deceptive  
appearance of the trading activity in connection with Beige shares  
and/or created an artificial price for the Beige share.

## Count 2

15

Section 75(1)(a) read with sections 75(2) and 75(3)(d) and/or 75(3)(h)  
and/or 75(3)(i) of the Act in that:

20 He used or knowingly participated in the use of manipulative,  
improper, false or deceptive trading practices on **27 January 2009**  
when he at 17:00:17 being near or at the close of market directly or  
indirectly purchased 4500 Beige shares at 12 cps on behalf of PCS or  
for his own account.

25 The primary purpose of this transaction was to change the closing  
price of the Beige share from 11cps to 12cps.

30 This transaction created, or might have created a false or deceptive  
appearance of the trading activity in connection with Beige shares  
and/or created an artificial price for the Beige share.

### Count 3

Section 75(1)(a) read with sections 75(2) and 75(3)(d) and/or 75(3)(h) and/or 75(3)(i) of the Act in that:

5

He used or knowingly participated in the use of manipulative, improper, false or deceptive trading practices on **28 January 2009** when he at 16:47:47 being near the close of market directly or indirectly purchased 5000 Beige shares at 12 cps on behalf of PCS or for his own account.

10

The primary purpose of this transaction was to change the closing price of the Beige share from 11cps to 12cps.

15

These transactions created, or might have created a false or deceptive appearance of the trading activity in connection with Beige shares and/or created an artificial price for the Beige share.

### Count 4

20

Section 75(1)(a) read with sections 75(2) and 75(3)(d) and/or 75(3)(h) and/or 75(3)(i) of the Act in that:

25

He used or knowingly participated in the use of manipulative, improper, false or deceptive trading practices on **30 January 2009** when he at 16:33:36 being near the close of market directly or indirectly purchased 5000 BEG shares at 12 cps on behalf of PCS or for his own account.

30

The primary purpose of this transaction was to change the closing price of the Beige share from 11cps to 12cps.

35

This transaction created, or might have created a false or deceptive appearance of the trading activity in connection with Beige shares and/or created an artificial price for the Beige share.

## Count 5

Section 75(1)(a) read with sections 75(2) and 75(3)(c) and/or 75(3)(d)  
5 and/or 75(3)(h) and/or 75(3)(i) of the Act in that:

He used or knowingly participated in the use of manipulative,  
improper, false or deceptive trading practices on **3 February 2009**  
when he at 16:26:24 and 16:27:16 being near the close of market  
10 directly or indirectly purchased at successively higher prices 13 000  
Beige shares at 11cps and 5000 Beige shares at 12cps respectively on  
behalf of PCS or for his own account.

The primary purpose of these transactions was to improperly or  
15 unduly change the closing price of the Beige share from 10cps to  
12cps.

These transactions created, or might have created a false or  
deceptive appearance of the trading activity in connection with Beige  
20 shares and/or created an artificial price for the Beige share.

## Count 6

Section 75(1)(a) read with sections 75(2) and 75(3)(c) and/or 75(3)(d)  
25 and/or 75(3)(h) and/or 75(3)(i) of the Act in that:

he knowingly used or participated in the use of manipulative,  
improper, false or deceptive trading practices on **5 February 2009**  
when he near the close of market directly or indirectly purchased at  
30 successively higher prices 210 300 Beige shares at 11cps at  
16:33:10; 47 Beige shares at 11cps at 16:33:25 and 4 953 Beige  
shares at 12cps at 16:33:25 on behalf of PCS or for his own account.

The primary purpose of these transactions was to unduly or improperly change the closing price of the Beige share from 11cps to 12cps.

5 These transactions created, or might have created a false or deceptive appearance of the trading activity in connection with Beige shares and/or created an artificial price for the Beige share.

### Count 7

10

Section 75(1)(a) read with sections 75(2) and 75(3)(d) and/or 75(3)(h) and/or 75(3)(i) of the Act in that:

15 He used or knowingly participated in the use of manipulative, improper, false or deceptive trading practices on **10 February 2009** when he at 17:00:03 being near or at the close of market directly or indirectly purchased 20 000 Beige shares at 12cps on behalf of PCS or for his own account.

20 The primary purpose of this transaction was to unduly or improperly change the closing price of the Beige share from 10cps to 12cps.

25 This transaction created, or might have created a false or deceptive appearance of the trading activity in connection with Beige shares and/or created an artificial price for the Beige share.

### Count 8

30 Section 75(1)(a) read with sections 75(2) and 75(3)(d) and/or 75(3)(g) and/or 75(3)(h) and/or 75(3)(i) of the Act in that:

He used or knowingly participated in the use of manipulative, improper, false or deceptive trading practices on **23 December 2008** when he at approximately 15:57 being near the close of market

directly or indirectly purchased 5 000 Cape Empowerment shares at 50cps on behalf of PCS or for his own account.

5 The primary purpose of this transaction was to change the closing price of the Cape Empowerment share from 45cps to 50cps.

10 This transaction created, or might have created a false or deceptive appearance of the trading activity in connection with Cape Empowerment shares and/or created an artificial price for the Cape Empowerment share.

### Count 9

15 Section 75(1)(a) read with sections 75(2) and 75(3)(d) and/or 75(3)(g) and/or 75(3)(h) and/or 75(3)(i) of the Act in that:

20 He used or knowingly participated in the use of manipulative, improper, false or deceptive trading practices on **14 January 2009** when he at 15:09 being near the close of market directly or indirectly purchased 1 000 Cape Empowerment shares at 50cps on behalf of PCS or for his own account.

25 The primary purpose of this transaction was to change the closing price of the Cape Empowerment share from 45cps to 50cps.

30 This transaction created, or might have created a false or deceptive appearance of the trading activity in connection with Cape Empowerment shares and/or created an artificial price for the Cape Empowerment share.

**Count 10**

Section 75(1)(a) read with sections 75(2) and 75(3)(d) and/or 75(3)(g) and/or 75(3)(h) and/or 75(3)(i) of the Act in that:

5

He used or knowingly participated in the use of manipulative, improper, false or deceptive trading practices on **15 January 2009** when he at 15:55 being near the close of market directly or indirectly purchased 1 000 Cape Empowerment shares at 50cps on behalf of PCS or for his own account.

10

The primary purpose of this transaction was to maintain the closing price of the Cape Empowerment share at 50cps.

15

This transaction created, or might have created a false or deceptive appearance of the trading activity in connection with Cape Empowerment shares and/or created an artificial price for the Cape Empowerment share.

20 **Count 11**

Section 75(1)(a) read with sections 75(2) and 75(3)(d) and/or 75(3)(g) and/or 75(3)(h) and/or 75(3)(i) of the Act in that:

25

He used or knowingly participated in the use of manipulative, improper, false or deceptive trading practices on **16 January 2009** when he at 16:21 being near the close of market directly or indirectly purchased 500 Cape Empowerment shares at 50cps on behalf of PCS or for his own account.

30

The primary purpose of this transaction was to maintain the reference price of the Cape Empowerment share at 50cps.

35

This transaction created, or might have created a false or deceptive appearance of the trading activity in connection with Cape



Empowerment shares and/or created an artificial price for the Cape Empowerment share.

**Count 12**

5

Section 75(1)(a) read with sections 75(2) and/or 75(3)(d) and/or 75(3)(g) and/or 75(3)(h) and/or 75(3)(i) of the Act in that:

10 He used or knowingly participated in the use of manipulative, improper, false or deceptive trading practices on **20 January 2009** when he at 16:14 being near the close of market directly or indirectly purchased 500 Cape Empowerment shares at 50cps on behalf of PCS or for his own account.

15 The primary purpose of this transaction was to change the closing price of the Cape Empowerment share from 45cps to 50cps.

20 This transaction created, or might have created a false or deceptive appearance of the trading activity in connection with Cape Empowerment shares and/or created an artificial price for the Cape Empowerment share.

**Count 13**

25 Section 75(1)(a) read with sections 75(2) and 75(3)(g) and/or 75(3)(h) and/or 75(3)(i) of the Act in that:

30 He used or knowingly participated in the use of manipulative, improper, false or deceptive trading practices on **26 January 2009** when he at 10:07 directly or indirectly purchased 500 Cape Empowerment shares at 50cps on behalf of PCS or for his own account.

The primary purpose of this transaction was to cause the reference price of the Cape Empowerment share to increase from 41cps to 50cps.

5 This transaction created, or might have created a false or deceptive appearance of the trading activity in connection with Cape Empowerment shares and/or created an artificial price for the Cape Empowerment share.

10 **Count 14**

Section 75(1)(a) read with sections 75(2) and 75(3)(g) and/or 75(3)(h) and/or 75(3)(i) of the Act in that:

15 He used or knowingly participated in the use of manipulative, improper, false or deceptive trading practices on **26 January 2009** when he at 10:37 directly or indirectly purchased 500 Cape Empowerment shares at 50cps on behalf of PCS or for his own account.

20

The primary purpose of this transaction was to cause the reference price of the Cape Empowerment share to increase from 40cps to 50cps.

25 This transaction created, or might have created a false or deceptive appearance of the trading activity in connection with Cape Empowerment shares and/or created an artificial price for the Cape Empowerment share.

30 **Count 15**

Section 75(1)(a) read with sections 75(2) and 75(3)(d) and/or 75(3)(g) and/or 75(3)(h) and/or 75(3)(i) of the Act in that:

5 He used or knowingly participated in the use of manipulative, improper, false or deceptive trading practices on **26 January 2009** when he at 16:43 being near the close of market directly or indirectly purchased 500 Cape Empowerment shares at 50cps on behalf of PCS or for his own account.

The primary purpose of this transaction was to change the closing price of the Cape Empowerment share from 40cps to 50cps.

10 This transaction created, or might have created a false or deceptive appearance of the trading activity in connection with Cape Empowerment shares and/or created an artificial price for the Cape Empowerment share.

15



These transactions created, or might have created a false or deceptive appearance of the trading activity in connection with Cape Empowerment shares and/or created an artificial price for the Cape Empowerment share.

5

### **Count 18**

Section 75(1)(a) read with sections 75(2) and 75(3)(c) and/or 75(3)(d) and/or 75(3)(h) and/or 75(3)(i) of the Act in that:

10

He used or knowingly participated in the use of manipulative, improper, false or deceptive trading practices on **6 February 2009** at 16:25 being near the close of market directly or indirectly purchased at successively higher prices 20 000 Cape Empowerment shares at 40cps, 2000 Cape Empowerment shares at 40cps and 2000 Cape Empowerment shares at 42cps on behalf of PCS or for his own account.

15

The primary purpose of these transactions was to unduly or improperly change the reference and/or closing price of the Cape Empowerment share from 34cps to 42cps.

20

This transaction created, or might have created a false or deceptive appearance of the trading activity in connection with Cape Empowerment shares and/or created an artificial price for the Cape Empowerment share.

25

### **Count 19**

Section 75(1)(a) read with sections 75(2) and/or 75(3)(d) and/or 75(3)(g) and/or 75(3)(h) and/or 75(3)(i) of the Act in that:

30

He used or knowingly participated in the use of manipulative, improper, false or deceptive trading practices on **6 February 2009** when he at 16:49 being near the close of market directly or indirectly

35

purchased 2 000 Cape Empowerment shares at 40cps on behalf of PCS or for his own account.

5 The primary purpose this transaction was to change the closing price of the Cape Empowerment share from 34cps to 40cps.

10 This transaction created, or might have created a false or deceptive appearance of the trading activity in connection with CAE shares and/or created an artificial price for the Cape Empowerment share.

**Count 20**

15 Section 75(1)(a) read with sections 75(2) and/or 75(3)(d) and/or 75(3)(h) and/or 75(3)(i) of the Act in that:

20 He used or knowingly participated in the use of manipulative, improper, false or deceptive trading practices on **9 February 2009** when he at 17:00 being near or at the close of market directly or indirectly purchased 5000 Cape Empowerment shares at 40cps on behalf of PCS or for his own account.

The primary purpose of this transaction was to change the closing price of the Cape Empowerment share from 35cps to 40cps.

25 This transaction created, or might have created a false or deceptive appearance of the trading activity in connection with Cape Empowerment shares and/or created an artificial price for the Cape Empowerment share.

30 **Count 21**

Section 75(1)(a) read with sections 75(2) and 75(3)(d) and/or 75(3)(g) and/or 75(3)(h) and/or 75(3)(i) of the Act in that:

