

**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 NUMBER: **03/2016**

In the matter between:

**THE DIRECTORATE OF MARKET ABUSE**

First Applicant

**THE FINANCIAL SERVICES BOARD**

Second Applicant

and

**VINAYAGAM KUMARASAMY MOODLEY**

Respondent

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**ORDER**

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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 78 (1) (a) of the Financial Markets Act, 19 of 2012. I hereby impose a penalty of R467 388 (Four Hundred and Sixty Seven Thousand Three Hundred and Eighty Eight Rand) on the Respondent to be paid on or before 30 August 2016.

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

Signed at **PRETORIA** on the <sup>23</sup>..... day of **August 2016**.



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

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

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**1. Introduction**

1.1. The Directorate of Market Abuse (the First Applicant) exercised its powers in terms of section 85 (1) (c) of the Financial Markets Act, 19 of 2012 ("the FMA") and investigated certain transactions concluded by an account in the name of Mr Vinayagam Kumarasamy Moodley ("the Respondent") in the shares of Basil Read Holdings Limited ("Basil Read").

1.2. Upon completion of the investigation the First Applicant, as empowered by section 6A (2) of the Financial Institutions (Protection of Funds) Act, 28 of 2001 ("the FI Act"), referred the matter to the Enforcement Committee of the Financial Services Board ("the EC"). The Applicants seek an administrative penalty to be imposed on the Respondent.



1.3. The Respondent wishes for the matter to be dealt with by way of an order pursuant to a settlement agreement as contemplated in section 6(B)(7)(a) of the FI Act.

1.4. The parties have agreed to the facts set out below as the basis of the settlement.

## 2. The Parties

2.1. The First Applicant is the Directorate of Market Abuse ("the DMA"), a committee of the Financial Services Board ("the FSB") established in terms of section 85(1)(a) of the FMA. The First Applicant exercises the powers of the FSB to investigate any matter relating to market abuse including insider trading, and to refer matters relating to market abuse to the EC.

2.2. The Second Applicant is the FSB, a juristic person established in terms of section 2 of the Financial Services Board Act, 97 of 1990 to supervise and enforce compliance with the laws relating to financial institutions and the provision of financial services, including the FMA.

2.3. The Applicants are herein represented by Mr Cuthbert King Chanetsa, the Deputy Executive Officer: Investment Institutions at the FSB and the Chairperson of the First Applicant.

2.4. The Respondent is Mr Vinayagam Kumarasamy Moodley, an adult male businessman. At all relevant times relevant to this matter the Respondent was employed in the position of Director: Cost Controller at Basil Read. His duties entailed consolidating and preparing Basil Read's management accounts which were presented to Basil Read's Executive Committee, Audit Committee and Management Committee.



2.5. At all times relevant to this matter Basil Read shares were listed on the Johannesburg Stock Exchange, a regulated market as contemplated by section 77 of the FMA.

### 3. The Basis of the Contravention

3.1. On 19 May 2014 the Respondent whilst in the employ of Basil Read prepared and submitted Basil Read's management accounts to the Chief Financial Officer of Basil Read. The management accounts were for the month of April 2014. The contents of the management accounts revealed that:

3.1.1. Basil Read had incurred an actual loss of R54 million during the four months from 31 December 2013 to 30 April 2014;

3.1.2. the company was forecasting a R100 million loss for its interim report covering the six month period to June 2014; and

3.1.3. Basil Read was forecasting a 78.6% decline in profits for the financial year ended December 2014.

3.2. The aforementioned information was not available to the public and there was a likelihood that the information would cause a material effect on the Basil Read share price should it be published. This information constituted inside information as defined in the FMA.

3.3. On 22 May 2014 the Respondent instructed his broker at PSG to sell 25 000 Basil Read shares at 900 cps. On 23 May 2014 the Respondent instructed his broker at Computershare to sell 70 478 Basil Read shares at 882 cps.

3.4. On the dates mentioned in **Table 1** below, the Respondent's brokers executed his instructions and sold the Basil Read shares as follows:



**TABLE 1**

<b>Transaction Date</b>	<b>Quantity</b>	<b>Price (c)</b>	<b>Proceeds (R)</b>
26/05/2014	70 478	882	621 616
04/06/2014	1 132	812	9 192
04/06/2014	23 759	810	192 448
04/06/2014	109	813	886

3.5. Consequently, the Respondent sold the Basil Read shares mentioned in **Table 1** above whilst he was in possession of inside information. The Respondent's conduct constituted a contravention of section 78 (1)(a) of the FMA.

3.6. On 6 June 2014 at 16:45, Basil Read published the details of the expected losses on the Stock Exchange News Service (SENS). The Basil Read share price declined from a closing price of 778 cents per share (cps) on 6 June 2014 to a closing price of 700 cps on 9 June 2014.

#### 4. The Mitigating Circumstances

4.1. When the Respondent acted in the manner mentioned above he did not apply his mind to the applicable legislation prohibiting insider trading and the implications of breaching the prohibitions. He now realizes the wrongfulness of his conduct and deeply regrets his actions;

4.2. the Respondent sold the shares to generate funds to pay off his debt and to rescue his brother's failing business; and

4.3. the Respondent has never been found to have breached the FMA prior to this matter.

## 5. The agreed penalty

5.1. In terms of section 6B(7)(a) of the FI Act, the parties agreed that the Respondent will pay a penalty of R467 388 (four hundred and sixty seven thousand three hundred and eighty eight rand) on or before 30 August 2016 in settlement of this matter.

5.2. The parties humbly request that the Honorable Chairperson makes the settlement an order, as envisaged in section 6B(7)(b) of the FI Act, on the terms set out above (the "Settlement Order").

## 6. Other conditions

6.1. This agreement is subject to approval by the EC and the parties specifically record that they are aware of the possibility that the EC 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 nor will this document be capable of being used in any proceedings against the Respondent in the future.

6.2. If the Respondent does not comply with the terms of this agreement and it is necessary for the FSB to proceed with legal proceedings, the Respondent 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 and interest on the outstanding amount, at the rate prescribed in terms of section 1 (2) of the Prescribed Rate of Interest Act, 55 of 1975.

6.3. No leniency or postponement given by 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;



6.4. Any receipt of a payment by the FSB after the due date shall be without prejudice to any of the rights of the FSB;

6.5. This agreement constitutes the whole agreement between the parties in respect of the offer to pay the penalty and costs.

6.6. The parties elect the addresses below as their *domicilium citandi et executandi* for the purposes of service of the EC order and any Notice or pleadings related to the breach of this agreement:

6.6.1. The Financial Services Board  
Block B, Riverwalk Office Park  
No. 41 Matroosberg Road  
Ashlea Gardens  
Pretoria

6.6.2. V K Moodley  
[LMoodley@basilread.co.za](mailto:LMoodley@basilread.co.za)

Signed at PRETORIA on 22 August 2016 on behalf of the First and Second Applicants.



**CK Chanetsa**

Signed at BORSBERG on 22 August 2016



**V K Moodley**