

**IN THE PROCEEDINGS BEFORE THE ENFORCEMENT COMMITTEE
OF THE FINANCIAL SERVICES BOARD**

CASE NO: **10/2012**

In the matter of:

THE DIRECTORATE OF MARKET ABUSE First Applicant

FINANCIAL SERVICES BOARD Second Applicant

and

HENDRICKS, NAZEEM First Respondent

MOHLABA, CHUENE JAMES Second 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 75 of the Securities Services Act, No 36 of 2004, and impose a penalty of R5 million on each Respondent. The remaining terms and conditions of the settlement agreement are incorporated and made an order of the Enforcement Committee.

Signed at **PRETORIA** on the³¹..... day of **AUGUST 2012**.


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

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

CASE NO: **10/2012**

In the matter of:

DIRECTORATE OF MARKET ABUSE	FIRST APPLICANT
FINANCIAL SERVICES BOARD	SECOND APPLICANT
and	
HENDRICKS, NAZEEM	FIRSTRESPONDENT
MOHLABA, CHUENE JAMES	SECONDRRESPONDENT

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

WHEREAS the Directorate of Market Abuse (DMA) investigated certain share transactions in the securities as set out below, in terms of section 82(2)(a) of the Securities Services Act No 36 of 2004 (SSA);

AND WHEREAS the DMA resolved to refer the matter 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);



AND WHEREAS the Respondents wish for the matter to be dealt with by way of an agreed penalty;

NOW THEREFORE the parties agree as follows:

1. The parties to the agreement

- 1.1. The First Applicant is the DMA, a committee of the FSB, established in terms of section 83(1) of the Securities Services Act, No 36 of 2004, read with section 12 of the now repealed Insider Trading Act, No 135 of 1998. The DMA exercises the powers of the FSB to investigate any matter relating to a market abuse offence.
- 1.2. 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.
- 1.3. The First and Second Applicants are herein represented by Cuthbert King Chanetsa, the Deputy Executive Officer of

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Investment Institutions of the FSB, and the Acting Chairperson of the DMA.

- 1.4. The First Respondent is MrNazeem Hendricks (Hendricks), an adult male, currently residing at 4 Craven Close Crawford, Cape Town. At all times relevant to this referral the First Respondent was employed at Argon Asset Management (Pty) Limited (Argon) as a portfolio manager and financial analyst. On 3 May 2011 Hendricks was appointed as a director of Argon, which position he held until his dismissal on 24 April 2012.
- 1.5. The Second Respondent is MrChuene James Mohlaba (Mohlaba), an adult male currently residing at 1 Oakhurst Close Rondebosch, Cape Town. At all times relevant to this referral the Second Respondent was employed at Argon Asset Management (Pty) Limited (Argon) as a portfolio manager and financial analyst. On 31 May 2010 Mohlaba was appointed as a director of Argon, which position he held until his resignation on 25 April 2012.



2. Background facts

- 2.1. Whilst the Respondents were employed at Argon, and at all times relevant to this referral, it was the responsibility of the Respondents to manage financial investments on behalf of clients of Argon. The majority of these investments of clients' funds were made in listed securities on the South African financial markets.
- 2.2. The equity team of Argon, comprising the Respondents and the Chief Investment Officer of Argon, had full discretion with regard to the investment decisions of clients' funds. The execution of these investment decisions were the responsibility of the Respondents.
- 2.3. The purchasing of listed securities (in executing the investment decisions) was done by Lefika Securities (Pty) Limited (Lefika), on the instructions of the Respondents. Lefika is an approved authorised user and equities member of the Johannesburg Stock Exchange (JSE).
- 2.4. Both with regard to Argon and with the investment industry as a whole, the performance of investments (returns on

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investments), plays a pivotal role both externally with reference to obtaining and retaining clients and remuneration. Prior to the transactions that form the subject of this referral, the equities team was informed that they needed to improve their investment performance. At that stage all the portfolios managed by the Respondents were in an investment loss position.

3. The manipulative practice

3.1. The transactions that form the subject of this referral relate to Afgri Limited (Afgri), Metair Investments Limited (Metair), Palabora Mining Limited (Palabora) and Comair Limited (Comair) (hereinafter referred as the securities). These are all listed securities as envisaged by section 75(1) read with section 1 of the Securities Act. All these securities were classified by the JSE as illiquid stock, in other words the trading volumes in these securities were relatively low.

3.2. The transactions that form the subject of this referral with regard to the Afgri, Metair and Palabora shares were executed from 5 January 2009 to 31 March 2009. The

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transactions with regard to Comair were executed from
3 March 2010 to 31 March 2010.

- 3.3. The details of the transactions are set out in the tables below which indicate the date of the trades, volumes and the prices of the purchases by the Respondents.

**Afgri purchases during the period
7 January 2009 to 31 March 2009**

No	Date	Volume	Price	Amount (R)
1.	7 January 2009	1 000	525	5 250
2.	9 January 2009	3 226	470	15 162
		10 000	500	50 000
		1 774	515	9 136
3.	14 January 2009	25 000	515	128 750
4.	16 January 2009	12 000	509	61 080
5.	19 January 2009	1 000	496	4 960
		13 000	495	64 350
6.	23 January 2009	20 000	470	94 000
7.	26 January 2009	35 000	470	164 500
8.	28 January 2009	20 000	500	100 000
9.	29 January 2009	20 000	500	100 000
10.	30 January 2009	120 000	492	590 400
11.	4 February 2009	5 000	480	24 000
12.	12 February 2009	15 800	390	61 620
		4 200	400	16 800
13.	20 February 2009	25 000	398	99 500
14.	23 February 2009	45 000	395	177 750
15.	24 February 2009	60 000	388	232 800
16.	25 February 2009	10 000	395	39 500
17.	26 February 2009	25 000	400	100 000
18.	27 February 2009	3 105	380	11 799
		4 368	384	16 773
		27 638	385	106 406
		33 949	390	132 401
		100 000	400	400 000
		940	425	3 995
19.	9 March 2009	25 000	370	92 500
20.	10 March 2009	42 000	370	155 400
21.	23 March 2009	20 000	385	77 000
22.	31 March 2009	21 250	430	91 375

No	Date	Volume	Price	Amount (R)
TOTAL		750 290		3 227 395

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Metair purchases for the month of March 2009

	Date	Volume	Price	Amount (R)
1.	2 March 2009	20 000	410	82 000
		9 500	420	39 900
		13 000	450	58 500
		500	510	2 550
2.	4 March 2009	30 000	510	153 000
3.	5 March 2009	1 000	509	5 090
4.	6 March 2009	30 000	500	150 000
5.	9 March 2009	24 000	508	121 920
6.	16 March 2009	1 000	474	4 740
7.	27 March 2009	20 000	320	64 000
8.	30 March 2009	5 000	390	19 500
		5 000	399	19 950
		1 000	400	4 000
		25 000	450	112 500
9.	31 March 2009	115 000	449	516 350
TOTAL		300 200		1 354 798

**Palabora purchases for the period
1 January 2009 to 31 March 2009**

No	Date	Volume	Price	Amount (R)
1.	2 January 2009	3 000	6700	201 000
2.	7 January 2009	500	6700	33 500
3.	9 January 2009	600	6580	39 480
4.	21 January 2009	2 000	5295	105 900
5.	26 January 2009	10 000	5095	509 500
		5 000	4990	249 500
		15 000	5200	780 000
6.	27 January 2009	971	5200	50 492
		161	5295	8 524.5
		868	5299	45 995.32
7.	29 January 2009	1 000	5299	52 990
		3 464	5300	183 592
		1 536	5595	85 939
		57 873	5600	3 240 888
8.	30 January 2009	12 000	5600	672 000
		5 000	5650	282 500
		175	5700	9 975
		3 000	5750	172 500
		35 000	5990	2 096 500

No	Date	Volume	Price	Amount (R)
9.	2 February 2009	100	5888	5 888
		500	5800	29 000
10.	6 February 2009	2 000	5450	109 000
11.	10 February 2009	2 000	5445	108900
		500	5450	27 250
12.	11 February 2009	3 500	5300	185 500
13.	12 February 2009	170	5150	8 755
		3 827	5200	199 004
		1 605	5300	85 065
		398	5350	21 293
14.	13 February 2009	4 000	5300	212 000
		1 000	5335	53 350
15.	17 February 2009	900	5096	45 864
		1 100	5097	56 067
		2 000	5400	108 000
16.	19 February 2009	1 250	5300	66 250
		1 000	5330	53 300
		400	5390	21 560
		200	5500	11 000
		2 150	5440	116 960
17.	24 February 2009	15 000	5440	816 000
18.	25 February 2009	14 000	5382	753 480
		2 500	5400	135 000
19.	26 February 2009	12 000	5198	623 760
20.	27 February 2009	500	4875	24 375
		45	5000	2 250
		955	5200	49 660
		500	5190	25 950
		60 000	5195	3 117 000
21.	3 March 2009	810	4890	39 609
		800	4900	39 200
		410	4980	20 418
		100	5000	5 000
		330	5100	16 830
22.	4 March 2009	5 000	5050	252 500
23.	5 March 2009	200	4800	9 600
24.	6 March 2009	1 035	4900	50 715
25.	9 March 2009	1 000	4900	49 000
		2 000	5100	102 00
26.	11 March 2009	3 000	4755	142 650
27.	17 March 2009	200	4700	9 400
28.	18 March 2009	1 000	4700	47 000
		1 800	4700	84 600
29.	25 March 2009	2 000	5099	101 980
30.	26 March 2009	1 200	5050	60 600
31.	30 March 2009	8 000	5080	406 400

No	Date	Volume	Price	Amount (R)
32.	31 March 2009	1 838	4800	88 224
		1 162	5000	58 100
TOTAL		320 133		334 698

Comair purchases for the month March 2010

	Date	Volume	Price	Amount (R)
1.	1 March 2010	10 000	280	28 000
		25 000	285	71 250
2.	4 March 2010	50 000	284	142 000
3.	5 March 2010	20 000	284	56 800
		50 000	285	142 500
		4 510	288	12 988
		490	289	1 416
4.	8 March 2010	50 000	285	142 500
5.	12 March 2010	14 639	254	37 183
		25 000	255	63 750
		361	285	1 028
6.	15 March 2010	50 000	275	137 500
		5 000	280	14 000
7.	16 March 2010	5 000	275	13 750
8.	17 March 2010	20 000	270	54 000
		30 000	285	85 500
9.	18 March 2010	60 000	280	168 000
10.	26 March 2010	35 000	278	97 300
11.	29 March 2010	13 950	270	37 665
		1 050	275	2 887
12.	31 March 2010	50 272	270	135 734
		167 750	275	461 312
		8 500	276	23 460
		1 000	277	2 770
		99 300	279	277 047
		4 514	285	12 864
		28 664	290	83 125
		100 000	300	300 000
TOTAL		930 000		606 329

3.4. In the majority of the above transactions the Respondents increased the market price of the securities, and in many instances increased the closing price of the securities. The

closing price of securities is of significance, because *inter alia* it is utilised to calculate the value of funds under management and is used by market participants as a basis to determine the prices at which to enter orders on the next trading day.

- 3.5. The Respondents in certain instances increased or maintained the prices of the securities and the closing prices of the securities by firstly, approving and causing to be entered purchase orders for the securities into the market at successively higher prices for the purpose of improperly increasing the market prices of the securities.
- 3.6. In addition, the Respondents on other occasions approved and caused to be entered purchase orders for the securities into the market for the purpose of increasing or maintaining the closing price of the securities.
- 3.7. In doing so, the Respondents created an artificial price for the securities and a false or deceptive appearance of the trading activities with regard to the securities, and therefore used or knowingly participated in a manipulative, improper, false or deceptive trading practice as envisaged in section 75(1), read with section 75(3)(c) and (d) of the SSA.

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4. The agreed penalty

4.1. The Respondents hereby tender to pay a penalty of R5 million each, which is inclusive of the costs of the investigations envisaged in section 6D (5) of the FI Act. The penalty is due and payable on the date that this settlement agreement is made an order by the Enforcement Committee. The Applicants have accepted the penalty offer taking into account, *inter alia* the following mitigating circumstances:

4.1.1. The Respondents have not previously been referred to the DMA or to the Enforcement Committee;

4.1.2. The Respondents have co-operated with the investigation team and have admitted their wrongdoing before the Enforcement Committee;

4.1.3. The Respondents have undertaken to assist with any further investigation of the DMA into this matter;

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4.1.4. The Respondents have expressed their remorse and embarrassment for having contravened the SSA;
and

4.1.5. The Respondents' employment with Argon has been terminated and they have been removed as directors of Argon.

4.2. The Applicants have also taken into account the personal circumstances of the Respondents.

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

4.4. 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.

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- 4.5. If the Respondents do not comply with the terms of this agreement and it becomes necessary for the DMA to proceed with legal proceedings, including the process of converting the order of the Enforcement Committee to a civil judgment in terms of section 6E (2) of the FI Act, the Respondents herewith consent to pay all legal costs to the DMA on the Attorney and own Client scale in terms of the High Court Rules inclusive of collection commission and Value Added Tax.
- 4.6. No leniency or postponement given by the DMA or the FSB to the Respondents 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.
- 4.7. Any receipt of a payment by the FSB after the due date shall be without prejudice to any of the rights of the DMA or the FSB.
- 4.8. The agreement constitutes the whole agreement between the parties in respect of the offer to pay an administrative penalty.

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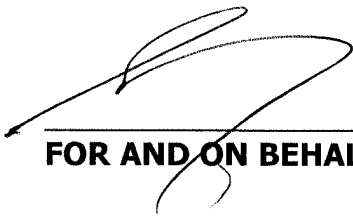
4.9. The parties select the addresses below as their *domicilium citandi et executandi* for the purposes of service of the Enforcement Committee order and for any notice or pleading related to a breach of this agreement:

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

4.9.2. The First Respondent
4 Craven Close
Crawford
Cape Town

4.9.3. The Second Respondent
1 Oakhurst Close
Rondebosch
Cape Town

SIGNED AT PRETORIA on the 29th day of August 2012.



FOR AND ON BEHALF OF THE REFERRING PARTY

SIGNED AT CAPE TOWN on the 27th day of August 2012.




NAZEEM HENDRICKS
FIRSTRESPONDENT

SIGNED AT CAPE TOWN on the 22nd day of August
2012.


CHUENE JAMES MOHLABA
SECONDRSPONDENT