

**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: 18/2016

In the matter of:

DIRECTORATE OF MARKET ABUSE

First Applicant

FINANCIAL SERVICES BOARD

Second Applicant

JOHAN FRANCK

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 80(1)(a) of the Financial Markets Act, 19 of 2012. I hereby impose a penalty of R1 million, inclusive of costs payable as follows:

1. R50 000 on receipt of the EC order; and
2. The balance on or before 31 July 2017.

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

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Signed at **PRETORIA** on the²⁴ day of **October 2016**.


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C F Eloff
Chairperson of the Enforcement Committee

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

CASE NO: /2016

In the matter between:

**DIRECTORATE OF MARKET ABUSE
FINANCIAL SERVICES BOARD**

**FIRST APPLICANT
SECOND APPLICANT**

and

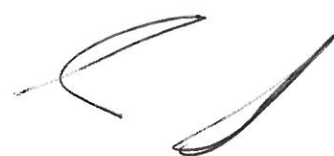
JOHAN FRANCK

RESPONDENT

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

1. Introduction

- 1.1. 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 the Respondent in the shares of SacOil Holdings Limited (SacOil) during the period from 14 October 2013 to 30 December 2013.
- 1.2. The Respondent admitted that he had contravened section 80(1)(a) of the FMA (prohibited trading practices) through his transactions during the investigation period and advised that he wished for the matter to be dealt with by way of a settlement agreement as contemplated by section 6(B)(7)(a) of the Financial Institutions (Protection of Funds) Act, 28 of 2001 (the FI Act).



1.3. The Respondent's admission accorded with the findings of the First Applicant's investigation, and the First Applicant as empowered by section 6A(2) of the FI Act referred the matter against the Respondent to the Enforcement Committee of the Second Applicant for the imposition of an administrative penalty.

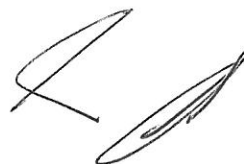
2. The parties to the agreement

- 2.1. The First Applicant is the Directorate of Market Abuse, a committee of the Financial Services Board (FSB) established in terms of section 85 of the FMA which exercises the powers of the FSB to investigate market abuse offences.
- 2.2. 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. One of the laws regulated by the FSB is the Financial Markets Act, 19 of 2012 (the FMA) which has as one of its overarching objectives to ensure that investors are protected in a financial market that is fair, efficient and transparent.
- 2.3. The First and Second Applicant are herein represented by Cuthbert King Chanetsa, the Deputy Executive Officer of Investment Institutions department of the FSB, and the Acting Chairperson of the DMA.
- 2.4. The Respondent is Johan Franck, a 66 year old adult male businessman residing at Unit 14, The Pass, Kyber Rock, Sandton.

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3. The Contravention

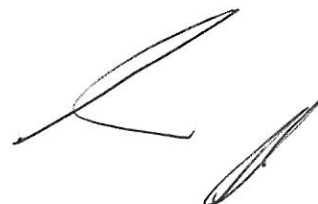
- 3.1. Trading in Sacoil shares had been suspended by the JSE, and that suspension was lifted on the 14th of October 2013.
- 3.2. The respondent held at that time a substantial investment, directly or indirectly, in Sacoil shares.
- 3.3. During the investigation period the respondent purchased 8 613 868 Sacoil shares, which accounted for 8.71% of all Sacoil shares purchased during the investigation period, and sold 8 910 126 Sacoil shares, which accounted for 9.01% of all Sacoil shares sold during the investigation period.
- 3.4. The Respondent's dominant purpose with the transactions was to create a false or deceptive appearance of the demand for, supply of and trading activity in connection with the Sacoil shares.
- 3.5. The Respondent admits that he conducted the trades knowing that the net effect of his trading would be the creation of the said false or deceptive appearance.
- 3.6. He did this, because he had initially lost his ability to trade in the Sacoil shares because of a suspension of trading in the shares and when the suspension was lifted, he wished to see the share prosper on the market so that he could protect and possibly grow his investment in Sacoil shares.
- 3.7. The JSE is a regulated market as contemplated in section 77 of the FMA and in the circumstances as detailed above, the Respondent admits that he contravened Section 80(1)(a) of the FMA.



4. Mitigating Circumstances

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

- 4.1. The admission and settlement offer was made early during the process- well before the investigation findings were placed before the First Applicant for consideration.
- 4.2. The early admission ensured a timely finalization of the investigation, and saved resources that were then allocated to other matters.
- 4.3. The Respondent continued to co-operate during the enforcement process, thereby likewise saving resources and the time of the Enforcement Committee.
- 4.4. The Respondent has never before been called upon to appear before the Enforcement Committee, and has never before been found to have breached any provisions of the FMA.
- 4.5. The Respondent did not derive any long term benefit from his transactions, and had wiped out his retirement nest egg and in effect his life savings through his investments in Sacoil shares and derivatives.
- 4.6. The Respondent accepted responsibility for his actions early during the investigation, and has shown deep remorse for having contravened the FMA.

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5. The Agreed Penalties

- 5.1. The Respondent tendered to pay a penalty of one million rand (R1 000 000) inclusive of all costs, payable as follows:
 - 5.1.1. R50 000 on receipt of the EC order;
 - 5.1.2. The balance on or before 31 July 2017.

- 5.2. The Applicants believe that a penalty of one million rand would constitute a just, proportionate and dissuasive penalty in the circumstances, and have accepted the amount offered by the Respondent, subject to approval by the Enforcement Committee.

- 5.3. 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.

6. Other Conditions

- 6.1. 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 nor will this document be capable of being used in any proceedings against the Respondent in the future.

- 6.2. 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

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postponement, leniency or amendment is reduced to writing and signed by the parties.

6.3. The agreement constitutes the whole agreement between the parties in respect of the offer to pay an administrative penalty.

6.4. 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. However the notice contemplated in terms of section 6E of the FI Act shall be delivered by electronic email. For the purpose of this agreement the parties' respective addresses shall be:

6.4.1. The Applicants
Block B, Riverwalk Office Park
41 Matroosberg Road
Ashlea Gardens
Pretoria

6.4.2. The Respondent
c/o Judin Combrinck Inc Attorneys
Wanderers Office Park
52 Corlett Drive
Sandton


Signed at Pretoria on this the 17th day of October 2016.



**FOR AND ON BEHALF
OF THE APPLICANTS**

Signed at Johannesburg on this the 3 day of October 2016.





J FRANCK