

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

CASE NO: **12/2016**

In the matter of:

**FINANCIAL SERVICES BOARD
THE DIRECTORATE OF MARKET ABUSE**

First Applicant
Second Applicant

and

**LEFIKA SECURITIES PTY LIMITED
SHAKONG, TEBOGO
BIOKANYO, YOLANDA REBECCA**

First Respondent
Second Respondent
Third 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(1), read with Section 75(2) and Sections 75(3)(c), 75(3)(d) and 75(3)(g) of the Securities Act, 36 of 2004 .

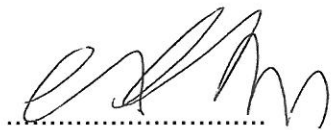
I hereby impose the following penalties:

1. R500 000 payable by Lefika Securities Pty Ltd, the First Respondent;

2. R2 million payable by Ms Tebogo Shakong (the Second Respondent);
3. R2 million payable by Ms Yolanda Rebecca Biokanyo (the Third Respondent);
4. the abovementioned penalties are inclusive of costs and shall be payable within 7 (seven) days from date of which the agreement was made an order by the Enforcement Committee, by failing of which it will carry interest at the rate prescribed in terms of Section 1(2) of the Prescribed Rate of Interest Act 1975, (55 of 1975) as provided for in Section 6D(5)(b) if the FI Act; and
5. it is further recorded that the Second and Third Respondent, respectively, shall surrender their trading licenses and resign as directors of the First Respondent.

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

Signed at **PRETORIA** on the¹⁹ day of **OCTOBER 2016**



C F Eloff
Chairperson of the Enforcement Committee

**IN THE PROCEEDINGS BEFORE THE ENFORCEMENT
COMMITTEE**

CASE NO: **12/2016**

In the matter of:

FINANCIAL SERVICES BOARD	First Applicant
THE DIRECTORATE OF MARKET ABUSE	Second Applicant
and	
LEFIKA SECURITIES (PTY) LIMITED	First Respondent
SHAKONG, TEBOGO	Second Respondent
BIOKANYO, YOLANDA REBECCA	Third Respondent

**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");



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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. Background facts

1.1. At all material times:-

1.1.1. the First Respondent was an authorised member of the JSE Limited approved as an equities member operating with two licences namely, a stock exchange licence and a bond licence;

1.1.2. the Second and Third Respondents were shareholders and executive directors of the First Respondent.

1.1.3. The Second and Third Respondents were both traders and the Second Respondent was also the Head of Trading of the First Respondent;

1.1.4. Argon Asset Management (Pty) Limited ("Argon") was an investment management company and a client of the First Respondent;



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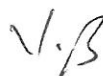
1.1.5. Argon employed as financial analysts and portfolio managers Messrs Nazeem Hendricks ("Hendricks") and Chuene James Mohlaba ("Mohlaba");

1.1.6. The purchasing of listed securities (in execution of investment instructions) was done by the First Respondent for Argon, executed in most instances by the Second and Third Respondents. Hendricks and Mohlaba instructed the Second and Third Respondents to effect such purchases.

2. The Manipulative Practice

2.1. 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 to as "the securities". These are all listed securities as envisaged by Section 75(1) read with section 1 of the SSA. All these securities were classified by the JSE Limited as illiquid stock.

2.2. The transactions that form the subject of this referral with regard to the securities were executed from 5



January 2009 to 31 March 2009, save for the transactions in Comair which were executed in the period 3 March 2010 to 31 March 2010;

- 2.3. On 27 August 2012, Hendricks and Mohlaba reached a settlement agreement with the Applicants in respect of such transactions in terms of Section 6B(7) of the FI Act which was made an order of the Enforcement Committee in terms of Section 6D(2) of the FI Act on 31 August 2012;
- 2.4. 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	Quantity	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.	29 January 2009	20 000	500	100 000
9.	30 January 2009	120 000	492	590 400
10.	4 February 2009	5 000	480	24 000
11.	12 February 2009	15 800	390	61 620

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No	Date	Quantity	Price	Amount (R)
		4 200	400	16 800
12.	20 February 2009	25 000	398	99 500
13.	23 February 2009	45 000	395	177 750
14.	24 February 2009	60 000	388	232 800
15.	25 February 2009	10 000	395	39 500
16.	26 February 2009	25 000	400	100 000
17.	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
18.	9 March 2009	25 000	370	92 500
19.	10 March 2009	42 000	370	155 400
20.	23 March 2009	20 000	385	77 000
21.	31 March 2009	21 250	430	91 375
TOTAL		750 290		3 227 395

Metair purchases for the month of March 2009

	Date	Quantity	Price	Volume
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

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

	Date	Quantity	Price	Amount
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	8 524.50
		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
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	108 900
		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

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	Date	Quantity	Price	Amount
		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	10 200
26.	11 March 2009	3 000	4755	142 650
27.	17 March 2009	200	4700	9 400
28.	25 March 2009	2 000	5099	101 980
29.	26 March 2009	1 200	5050	60 600
30.	30 March 2009	8 000	5080	406 400
321.	31 March 2009	1 838	4800	88 224
		1 162	5000	58 100
TOTAL		320 133		17 334 698

Comair purchases for the month March 2010

	Date	Quantity	Price	Amount
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

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		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		2 606 329

2.5 In the majority of the above transactions the Respondents together with Hendricks and Mohlaba increased the market price of the securities, and in many instances increased the closing price of the securities.

2.6 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.

2.7 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.

2.8 In doing so, the Respondents, in cohesion with Hendricks and Mohlaba created an artificial price for the securities

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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(2) and Sections 75(3)(c), 75(3)(d) and 75(3)(g) of the SSA.

- 2.9 The Respondents accordingly admit that they committed the offence of Prohibited Trading Practice, as envisaged by Section 75(1), read with Section 75(2) and Sections 75(3)(c), 75(3)(d) and 75(3)(g) of the SSA.

3. The Agreed Penalty

- 3.1. The Respondents tender to pay the following penalties respectively, which is inclusive of the costs of the investigation and proceedings as envisaged in Section 6D(5) of the FI Act:-

3.1.1. The First Respondent a penalty of R500,000.00 (Five Hundred Thousand Rand); and

3.1.2. The Second and Third Respondents each a penalty of R2 million (Two Million Rand)

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3.2 The respective penalties are due and payable within seven (7) days of the date that this agreement is made an order by the Enforcement Committee in terms of Section 6D(2) of the FI Act. Should the penalties not be paid within this period, the respective unpaid penalties, alternatively unpaid part thereof, will carry interest at the rate prescribed in terms of Section 1(2) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975) as provided for in Section 6D(5)(b) of the FI Act.

3.3 The Second and Third Respondents agree to surrender their trading licenses and resign as directors of the First Respondent.

3.4 The Applicants have accepted the penalty offer taking into consideration mitigating circumstances, including the personal circumstances of the Second and Third Respondents.

3.5 In terms of Section 6D(3) of the FI Act, the parties present the following facts for consideration in order to determine the appropriate administrative penalty:-

3.5.1 The nature, duration, seriousness and extent of the Contravention committed by the Respondents.

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- 3.5.2 The nature of the Contravention is very serious in that the Second and Third Respondents acted deliberately, are market professionals who hold an office of fiduciary duty.
- 3.5.3 The contravention was committed over a period of at least four (4) months and in respect of four (4) listed securities.
- 3.5.4 The Second and Third Respondents were coerced by Hendricks and Mohlaba to participate in the scheme whereby orders were entered on behalf of Hendricks and Mohlaba, which resulted in an increase in the share price of the securities.
- 3.5.5 The Second and third Respondents acted in the course and scope of their employment with the First Respondent.
- 3.5.6 The Respondents therefore directly and knowingly participated in the Prohibited Trading Practice.
- 3.5.7 Loss and damage suffered as a result of the Contravention, the level of profit derived from the Contravention and the impact on the relevant sectors. It is impossible to calculate the accurate amount in

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damages because the Prohibited Trading Practice occurred over a period of time during which the share price of the shares and the Comair share were increased through the implementation of the Scheme by Hendricks and Mohlaba. It is therefore impossible to determine what the share price of the shares and the Comair share would have been, had it not been for the Scheme. This would also apply to the impact of the Scheme on the relevant sectors.

3.5.8 During the existence of the Scheme, the First Respondent, and the Second and Third Respondents *inter alia* as shareholders in the First Respondent, benefited from commissions of continued and regular instructions received from Hendricks and Mohlaba.

3.5.9 The shareholders in the shares and the Comair share would have suffered losses when the share prices of the shares and the Comair share returned to the correct market prices.

3.5.10 The Respondents have not previously failed to comply with a fiduciary duty or law and no previous fine have been imposed or compensation paid based on the same set of facts.

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3.5.11 A severe sanction and large penalty would deter other market professionals from engaging in similar Prohibited Trading Practices.

3.5.12 The Second and Third Respondents have agreed to surrender their trading licenses and to resign as directors of the First Respondent.

4. Order by Enforcement Committee and Default by Respondents.

4.1. The parties consent thereto and humbly request that the Honourable Enforcement Committee make the settlement agreement an order as envisaged in Section 6B(7)(b) of the FI Act.

4.2. 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 the settlement agreement. In such an event this agreement will be null and void and neither party will have any rights or obligations in terms thereof. In this regard and under such circumstances, this agreement does not amount to a novation of the cause

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or causes of action in respect of which the Applicants proceeded against the Respondents.

- 4.3. Should any of the Respondents not comply with the terms of this agreement, and it becomes necessary for the Applicants to proceed with legal proceedings to enforce this agreement, 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 agree to pay all legal costs to the Applicants on the attorney and own client scale, including collection commission.
- 4.4. No leniency or postponement given by the Applicants to the Respondents will be binding on the Applicants.
- 4.5. No amendment to the terms and conditions of the agreement will be binding unless such amendment is reduced to writing, signed by the parties and approved by the Enforcement Committee.
- 4.6. Any payment received by the Applicants after the due date thereof will be without prejudice to any of the rights of the Applicants.

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

4.8. The parties select the addresses below as the addresses at which they agree to accept notice and service of all notices and process relating to this agreement:-

4.8.1. The Applicants
c/o The Head of Enforcement
The Financial Services Board
Block B, Riverwalk Office Park
41 Matroosberg Road
Ashlea Gardens
Pretoria

4.8.2. The Respondents
Francisco Khoza
Bowman Gilfillan Africa Group
165 West Street
Sandton, Johannesburg

SIGNED AT PRETORIA on the 11th day of October 2016
2016.



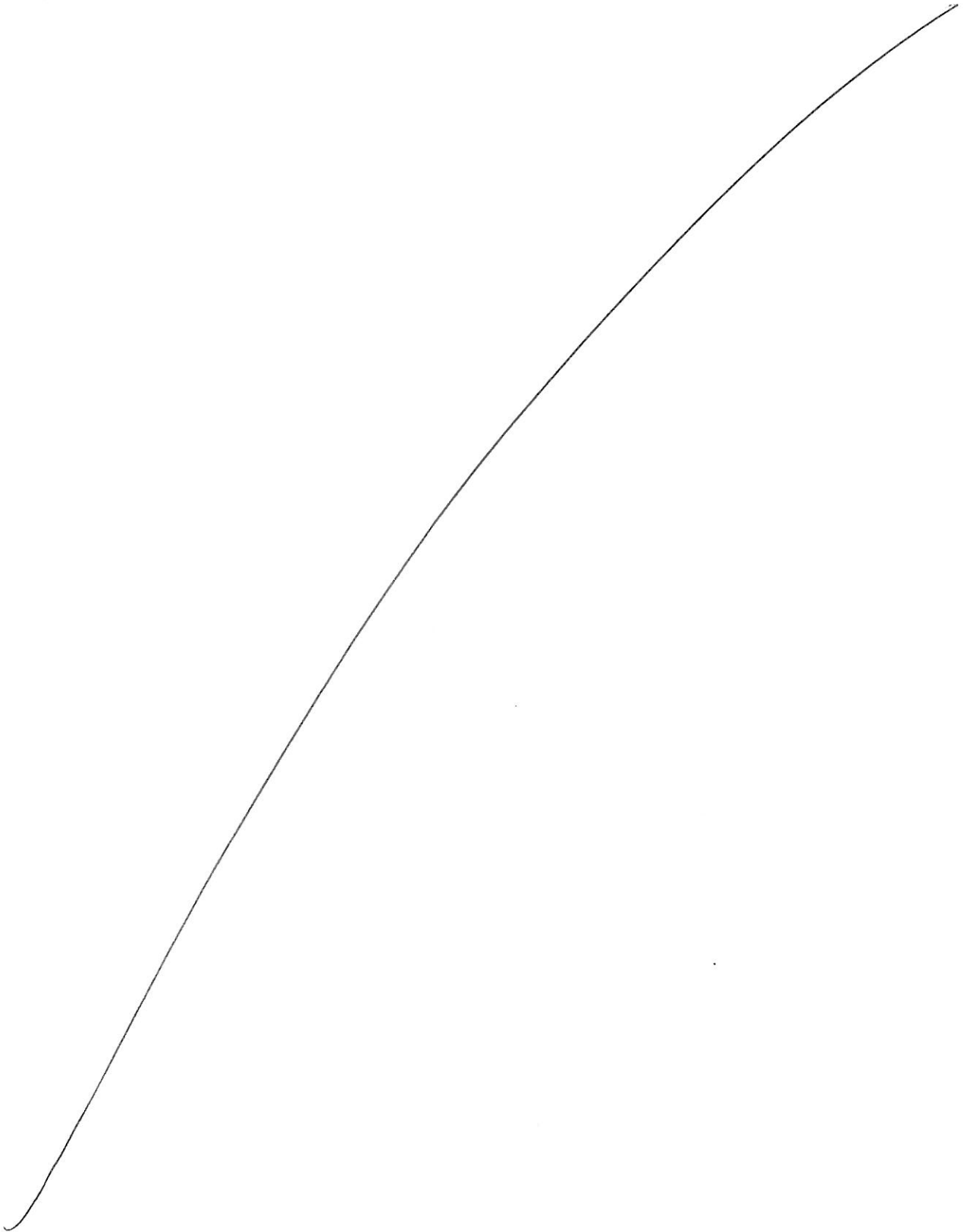
**ADV D TSHIDI
CHAIRPERSON OF THE DIRECTORATE OF MARKET ABUSE
AND THE EXECUTIVE OFFICER OF THE FINANCIAL SERVICES
BOARD
FOR AND ON BEHALF OF THE APPLICANTS
DULY AUTHORISED THERETO**

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SIGNED AT MELROSE on the 4 day of OCTOBER
2016.

B. Mcdonip
LEFIKA SECURITIES (PTY) LTD
**FOR AND ON BEHALF OF THE FIRST RESPONDENT
DULY AUTHORISED THERETO**

SIGNED AT Melrose Arch on the 4th day of October
2016.

Tebogo Shakong
TEBOGO SHAKONG
SECOND RESPONDENT

SIGNED AT MELROSE on the 04 day of OCTOBER
2016.

Yolanda Rebecca Biokanyo
YOLANDA REBECCA BOKANYO
THIRD RESPONDENT