

**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: **10/2014**

In the matter of:

THE DIRECTORATE OF MARKET ABUSE

First Applicant

THE FINANCIAL SERVICES BOARD

Second Applicant

and

BLUE FINANCIAL SERVICES LIMITED

Registration number: (1996/006595/06)

Respondent

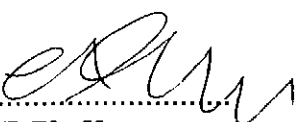
ORDER

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 76 of the Securities Services Act, 36 of 2004 and impose a penalty of R500 000 (five hundred thousand rand only).

I make no order as to costs.

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

Signed at **PRETORIA** on the^{8th}..... day of **OCTOBER 2014**.



C F Eloff

Chairperson of the Enforcement Committee

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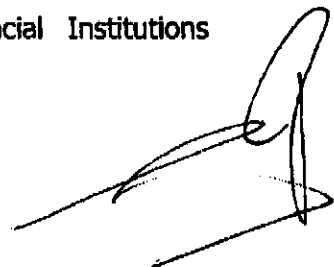
In the matter of:

THE DIRECTORATE OF MARKET ABUSE	First Applicant
THE FINANCIAL SERVICES BOARD	Second Applicant
and	
BLUE FINANCIAL SERVICES LIMITED	Respondent

(Registration number: 1996/006595/06)

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

1. The Directorate of Market Abuse (the First Applicant) exercised its powers in terms of section 82 (2) (a) of the Securities Services Act, 36 of 2004 (the SSA) and investigated certain publications by Blue Financial Services Limited (the Respondent) during the period from 23 April 2009 to 21 June 2010.
2. Upon completion of the investigation, the First Applicant as empowered by section 6A (2) of the Financial Institutions

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(Protection of Funds) Act, 28 of 2001 (the FI Act) referred certain conduct by the Respondent to the Enforcement Committee of the Financial Services Board (EC). The First Applicant seeks an administrative penalty to be imposed on the Respondent in respect of its conduct pertaining to the aforesaid publications.

3. The Respondent wishes for the matter to be dealt with by way of a settlement agreement as contemplated by section 6(B) (7) (a) of the FI Act.
4. The parties have agreed to the facts set out below.

5. **The parties**

- 5.1. The First Applicant is the Directorate of Market Abuse, a committee of the Financial Services Board (FSB) established in terms of section 83 (1) of the SSA. The First Applicant exercises the powers of the FSB to investigate any matter relating to market abuse.
- 5.2. 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.
- 5.3. The Applicants are herein represented by Mr. Cuthbert King Chanetsa, the Deputy Executive Officer: Investment Institutions at the FSB and the Deputy Chairperson of the Directorate of Market Abuse.

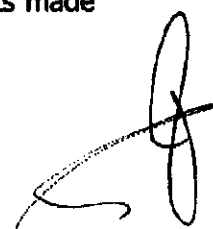
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- 5.4. The Respondent is Blue Financial Services Limited, a public company duly registered in terms of the laws of the Republic of South Africa with registration number 1996/006595/06.
- 5.5. At all times relevant to this matter the shares of the Respondent were listed on the Alternative Exchange of the Johannesburg Stock Exchange, a regulated market as contemplated by section 72 of the SSA.
- 5.6. The Respondent is herein represented by Mr. Johan Meiring, a director and Group Chief Executive Officer in the employ of the Respondent who warrants that he is duly authorized by the Respondent to enter into this agreement on behalf of the Respondent.

6. **The Contraventions**

6.1. **False and/or Misleading Statement regarding Share Based Payments to the Respondent's Employees**

- 6.1.1. On 23 April 2009, the Respondent published a trading statement wherein it stated that it expected the earnings per share (EPS) and headline earnings per share (HEPS) for the financial year ended 28 February 2009 to be between 100% and 120% higher and 35% to 55% higher respectively than the comparative numbers published the previous financial year-end.
- 6.1.2. The percentages provided in the abovementioned statement for EPS and HEPS were incorrect due to *inter alia* an incorrect treatment of share based payments made



to the Respondent's employees in terms of an employee share incentive scheme.

6.1.3. In terms of IFRS2 of the International Financial Reporting Standard the Respondent should have recognized the share based payments to employees as an expense. Such an expense must be allocated over the period between the date when the right to the shares is acquired by any particular employee and the date when the shares are received.

6.1.4. The Respondent incorrectly applied IFRS 2 and failed to recognize share based payments made to the Respondent's employees as an expense. The incorrect application of IFRS 2 was a historical error that resulted in the erroneous calculation of the percentages that were reflected in the trading statement of 23 April 2009.

6.1.5. The necessary adjustment to correct the error had a material effect on the Net Profit After Tax (NPAT), EPS and HEPS that were published to the market on 23 April 2009:

6.1.5.1. NPAT reduced by an amount of R10 787 064.

This was a reduction of 7.4% to the bottom range and a decrease of 6.71% to the top range.

6.1.5.2. EPS and HEPS were reduced by approximately 2.09cps.



In percentage terms these are 7.14% and 12.55% decreases to the bottom range of the EPS and HEPS respectively.

It equated to a 6.49% and 10.93% decrease to the top range of the EPS and HEPS respectively.

- 6.1.6. The Respondent thus contravened section 76 of the SSA by publishing a false/ and or misleading statement in circumstances where it ought to have known that the statement was incorrect.

6.2. False and/or misleading statement regarding incorrect recognition of an investment

- 6.2.1. In note 33 (under the heading "*Restatements Impacting net Loss/Profit*") to the Respondent's consolidated annual financial statements for the year ended 28 February 2010 the Respondent stated that:

"Investment recognition

The Group has amended its recognition of its investment in the Zambia based operation, Nedfin Limited, previously accounted for as a subsidiary under its Botswana based operations Blue Employee Benefits (Propriety) Limited. The investment is a subsidiary of Blue Financial Services (Zambia) Limited, based on the initial purchase agreement and share certificate registration. The resultant change requires a restatement of foreign exchange losses of R29.2 million on intergroup flow of funds, related to the purchase of the company, which was previously recorded as part of the foreign currency translation reserve on translation and consolidation of the subsidiary results."



6.2.2. The aforementioned mistake was repeated in the publications by the Respondent on 23 April 2009, 21 May 2009, 31 August 2009 and 30 November 2009.

6.2.3. The mistake was caused by a weak internal financial control environment which led to incorrect information being provided to the Respondent's auditors.

6.2.4. The restatement had a material effect on the Respondent's financial results that were published to the market on 23 April 2009, 21 May 2009, 31 August 2009 and 30 November 2009.

6.2.5. The Respondent thus contravened section 76 of the SSA by publishing the abovementioned false/ and or misleading statements in circumstances where it ought to have known that the statements were incorrect.

7. The mitigating circumstances

7.1. It is also agreed that the following mitigating factors are relevant to the matter:

7.1.1. The Respondent accepted its wrongful conduct and did not waste the EC's time on a protracted case;

7.1.2. The errors were not intentional and were not intended to mislead the investing public.

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8. The agreed penalty

- 8.1. In terms of section 6B(7)(a) of the FI Act, the parties agreed that the Respondent will pay a penalty of R500 000 (five hundred thousand rand) in settlement of the matter.
- 8.2. 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").

9. Other conditions

- 9.1. 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.
- 9.2. 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;
- 9.3. 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;
- 9.4. Any receipt of a payment by the FSB after the due date shall be without prejudice to any of the rights of the FSB;



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

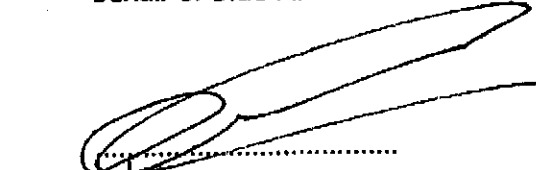
9.5.1. The Financial Services Board
Block B, Riverwalk Office Park
No. 41 Matroosberg Road
Ashlea Gardens
Pretoria

9.5.2. Blue Financial Services
Mayibuye Place
355 Kent Avenue
Randburg
2194

Signed at PRETORIA on this the ^{6th} ~~30th~~ day of ^{OCTUBER} ~~September~~ 2014 on behalf of the Applicants.


.....
CK Chanetsa

Signed at Randburg on this the ^{30th} day of September 2014 on behalf of Blue Financial Services Limited.


.....
J Melring

