

**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: EC 33/2017**

In the matter of:

**THE DIRECTORATE OF MARKET ABUSE**

First Applicant

**FINANCIAL SERVICES BOARD**

Second Applicant

and

**GUBB, JAMES GEORGE WITHERIDGE**

Respondent

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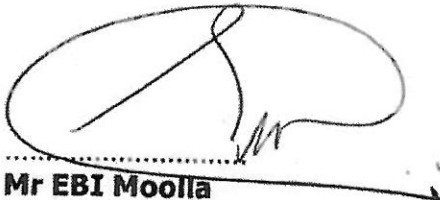
**ORDER**

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1. 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) read with section 80(3)(a) of the Financial Markets Act, No. 19 of 2012.
2. I hereby impose an administrative penalty of R100 000 (One hundred thousand rand), inclusive of costs, to be paid by the Respondent within 20 business days from the date this order is granted.

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

Signed at **DURBAN** on the .....<sup>23<sup>RD</sup></sup> day of **OCTOBER 2017**

A handwritten signature in black ink, consisting of a large, stylized loop followed by a smaller, more intricate flourish.

**Mr EBI Moolia**  
**Deputy Chairperson of the Enforcement Committee**

<sup>u</sup>  
Annex A<sup>a</sup>

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ESTABLISHED IN TERMS OF SECTION 10(3) OF THE FINANCIAL SERVICES  
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**CASE NO:**

**33/2017**

In the matter between:

**DIRECTORATE OF MARKET ABUSE**

**FIRST APPLICANT**

**FINANCIAL SERVICES BOARD**

**SECOND APPLICANT**

and

**GUBB, JAMES GEORGE WITHERIDGE**

**RESPONDENT**

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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. The parties to the agreement**

- 1.1. 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 Financial Markets Act No.19 of 2012 (FMA). The First Applicant exercises the powers of the FSB to investigate matters relating to market abuse offences.
- 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 Mr Jurgen Arnold Boyd, the acting Deputy Executive Officer of Investment Institutions of the FSB, and the Acting Chairperson of the First Applicant.
- 1.4. The Respondent is an adult male residing at 8 Eyton Square, 24 Eyton Road, Cape Town, 7708.

## 2. Introduction

- 2.1. The First Applicant exercised its powers in terms of section 85 (1)(c)(ii) of the FMA and investigated transactions concluded by Mr James George Witheridge Gubb (the Respondent) in the shares of Oakbay Resources and Energy Limited (Oakbay) on 31 March 2017.
- 2.2. The First Applicant's investigation concluded that the Respondent had contravened section 80 (1)(a) read with section 80(3)(a) of the FMA (prohibited trading practices). Upon completion of the investigation the First Applicant as empowered by section 6A (2) of the Financial Institutions (Protection of Funds) Act, No.28 of 2001 (the FI Act) referred the Respondent to the Enforcement Committee of the Financial Services Board. The Applicants seek an administrative sanction to be imposed on the Respondent.
- 2.3. The Respondent wishes for the matter to be dealt with by way of a settlement agreement as contemplated by section 6B(7)(a) of the FI Act.
- 2.4. The parties have agreed to the facts set out hereunder.



**The Agreed Facts and admissions by the Respondent**

- 2.5. At all relevant times hereto Oakbay was listed on the Johannesburg Stock Exchange, which is a regulated market as contemplated in section 77 of the FMA.
- 2.6. The Respondent admits that he knowingly contravened Section 80(1)(a) read with section 80(3)(b) of the FMA in that:
- 2.6.1. On 31 March 2017 he, for his own account, concluded the transactions referred to in "Annexure A" attached hereto in respect of Oakbay shares.
- 2.6.2. In respect of each trade he approved and entered within a short period of time a bid and offer for one Oakbay share resulting in the transactions referred to in Annexure A.
- 2.6.3. These transactions did not result in a change in the beneficial ownership of shares. He remained the beneficial owner before and after the purchase and sale of the Oakbay shares.
- 2.6.4. These transactions created a false and deceptive appearance of the trading activity in connection with the Oakbay share.
- 2.6.5. These transactions created an artificial price for the Oakbay share.

**3. Mitigating Circumstances**

- 3.1. The parties record that the following constitute mitigating circumstances which have been taken into consideration in this matter:
- 3.1.1. The Respondent's transactions occurred on a single day.




- 3.1.2. The Respondent has accepted responsibility for his actions and has shown deep remorse for having contravened the FMA.
- 3.1.3. The Respondent has fully co-operated during the investigation and took a pro-active role to reach a settlement, thereby saving the resources and time of the Applicants and the Enforcement Committee.
- 3.1.4. The Respondent has not been found to have previously breached any provisions of the FMA by the EC.

#### **4. Aggravating Circumstances**

- 4.1. The Respondent's transactions created a false or deceptive appearance of the trading activity in connection with the Oakbay share.
- 4.2. The Respondent's transactions created an artificial price for the Oakbay share.
- 4.3. Notwithstanding the fact that the JSE cancelled the transactions, the Respondent's transactions undermined the integrity of the South African financial market.

#### **5. The Agreed Penalty**

- 5.1. The Respondent hereby agrees to pay a penalty of R100 000 (One hundred thousand rand) inclusive of costs to be paid within 20 working days from the date on which this settlement agreement is made an order of the Enforcement Committee.
- 5.2. The penalty offered to be paid by the Respondent in settlement of this matter is subject to approval by the Enforcement Committee.

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

**Other Conditions**

- 5.4. 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 nor will this document be capable of being used in any proceedings against the Respondent in the future.
- 5.5. 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 postponement, leniency or amendment is reduced to writing and signed by the parties.
- 5.6. The agreement constitutes the whole agreement between the parties in respect of the offer to pay an administrative penalty and costs of the investigation.
- 5.7. 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 to the Respondent. For the purpose of this agreement the parties' respective addresses shall be:
- 5.7.1. The Directorate of Market Abuse



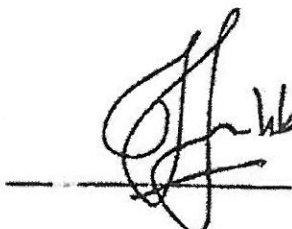
c/o The Financial Services Board  
Block B, Riverwalk Office Park  
41 Matroosberg Road  
Ashlea Gardens  
Pretoria

5.7.2. The Respondent  
8 Eyton Square  
24 Eyton Road  
Cape Town  
7708  
By email: [jgubb@mweb.co.za](mailto:jgubb@mweb.co.za)

Signed at **PRETORIA** on this the 17 day of **October** 2017 on behalf of the Applicants.

  
JA BOYD

Signed at Cape Town on this the 13<sup>th</sup> day of **October** 2017 by the Respondent.


  
J.G.W. Gubb





J G W GUBB

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ANNEXURE A

Trades by / Mr JGW Gubb In Oakbay : Resources and Energy Limited shares

count	Date	BID ENTERED				OFFER ENTERED				Matched trade
		Time	volume	price (c)	Buy account	Time	Volume	price (c)	Sell account	
1	31/03/2017	11:23:05	1	888	511048	11:32:10	1	888	141978	11:32:10
2	31/03/2017	11:33:40	1	1 109	511048	11:34:00	1	1 109	141978	11:34:00
3	31/03/2017	11:35:28	1	1 385	511048	11:35:29	1	1 385	141978	11:35:29
4	31/03/2017	11:36:30	1	1 730	511048	11:36:37	1	1 730	141978	11:36:37
5	31/03/2017	11:37:30	1	2 150	511048	11:37:33	1	2 150	141978	11:37:33
6	31/03/2017	11:38:37	1	2 050	511048	11:39:57	1	2 050	141978	11:39:57
7	31/03/2017	11:40:38	1	2 050	511048	11:40:53	1	2 050	141978	11:40:53
8	31/03/2017	11:41:47	1	1 945	511048	11:42:01	1	1 945	141978	11:42:01
9	31/03/2017	11:42:54	1	1 945	511048	11:42:55	1	1 945	141978	11:42:55
10	31/03/2017	11:44:11	1	1 945	511048	11:44:06	1	1 945	141978	11:44:11
11	31/03/2017	11:47:36	1	1 860	511048	11:47:41	1	1 860	141978	11:47:41
12	31/03/2017	11:51:48	1	1 860	511048	11:51:53	1	1 860	141978	11:51:53
13	31/03/2017	11:52:29	1	1 865	511048	11:52:27	1	1 865	141978	11:52:29
14	31/03/2017	11:54:12	1	1 900	511048	11:53:59	1	1 900	141978	11:54:12
15	31/03/2017	11:54:58	1	1 905	511048	11:54:56	1	1 905	141978	11:54:58
16	31/03/2017	11:55:42	1	1 910	511048	11:55:27	1	1 910	141978	11:55:42
17	31/03/2017	11:56:48	1	1 915	511048	11:56:39	1	1 915	141978	11:56:48
18	31/03/2017	12:13:55	1	1 456	511048	12:08:51	1	1 456	141978	12:15:09
19	31/03/2017	12:18:55	1	1 290	511048	12:18:49	1	1 290	141978	12:18:55
20	31/03/2017	12:24:45	1	1 290	511048	12:24:08	1	1 290	141978	12:24:45
21	31/03/2017	12:25:31	1	1 310	511048	12:25:24	1	1 310	141978	12:25:31
22	31/03/2017	12:26:31	1	1 290	511048	12:26:10	1	1 290	141978	12:26:31

Handwritten signature and initials, possibly 'JGW' and 'Gubb', located in the bottom right corner of the page.