

**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: 28/2017

In the matter between:

**DIRECTORATE OF MARKET ABUSE
FINANCIAL SERVICES BOARD**

**FIRST APPLICANT
SECOND APPLICANT**

and

HANNO VAN DYK

RESPONDENT


ORDER

In terms of section 6B(7)(b) of the Financial Institutions (Protection of Funds) Act, No. 28 of 2001 and with due consideration to the settlement agreement attached marked annexure "A", I hereby determine that the Respondent contravened section 75 of the Securities Services Act, No 36 of 2004, in respect of the trades mentioned in Annexure "A" of the settlement agreement.

I hereby impose a penalty of R750 000 (seven hundred and fifty thousand rand), inclusive of costs, to be paid within 10 working days from the date of this order.

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

Signed at Durban on the 19th day of **October 2017**.


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Mr E A Moolla

Deputy Chairperson of the Enforcement Committee

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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 is the Directorate of Market Abuse (Directorate). The Directorate exercises the powers of the Financial Services Board to investigate market abuse contraventions, which includes a contravention of section 75 (prohibited trading practices) of the Securities Services Act, No.36 of 2004 (Act).

1.2. The Second Applicant is the Financial Services Board (FSB). The FSB is a statutory body created by the Financial Services Board Act, No 97 of 1990 (the FSB Act), with its office at Riverwalk Office Park, Block B, 41 Matroosberg Road, Ashlea Gardens Extension 6, Pretoria.

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- 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 DMA.
- 1.4. The First Applicant investigated the transactions, referred to in Annexure "A" attached hereto, concluded by Mr H Van Dyk (the Respondent) himself or approved or entered on his instructions in respect of the shares of Convergenet Holdings Limited (Convergenet) during the period December 2008.
- 1.5. The Respondent is an adult male whose principal place of business is situated at Sizwe House, 62 Waterloo Avenue, Samrand, Kosmosdal.
- 1.6. After careful consideration of the findings of the investigation, the First Applicant is of the opinion that the Respondent contravened section 75 of the Act in respect of each trade mentioned in Annexure "A". 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 matter against the Respondent to the Enforcement Committee of the FSB. The Applicants seek an administrative penalty to be imposed on the Respondent.
- 1.7. 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.
- 1.8. The parties have agreed to the facts set out hereunder.

2. Agreed Facts

- 2.1. Convergenet is a public company whose shares are listed on the exchange of the JSE Ltd (JSE).
- 2.2. The exchange of the JSE is a regulated market.

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2.3. At all relevant times the Respondent was a non-executive director and shareholder of Convergenet. Notwithstanding his directorship, the Respondent's primary focus was the operation and running of the Sizwe Group of Companies (Sizwe) which by virtue of what is stated hereafter constituted subsidiary companies in Convergenet. The Respondent held Convergenet shares in an entity called Yellow Star Group Holdings (Pty) Ltd (Yellow Star). Yellow Star had a trading account at Imara SP Reid (Pty) Ltd (Imara), and Sasfin Securities (Pty) Ltd (Sasfin), both authorised users of the JSE.

2.4. At all relevant times Trinity Asset Management (Pty) Ltd (TAM) was an authorised financial services provider. Mr Quinton James George (George) was a representative of TAM.

2.5. The Respondent was authorised to trade on the Yellow Star account held at Sasfin. The Respondent authorised George to trade on the Yellow Star account held at Imara. The terms of the authority provided to George were dictated by him to the Respondent, and were provided verbally.

2.6. Yellow Star invested in Convergenet single stock future contracts (SSFs) on the advice of George.

2.7. The trades referred to in "Annexure A" were executed for and on behalf of Yellow Star and in two instances included other clients of TAM.

2.8. The financial crisis in 2008, the decline in the share price of Convergenet shares and the increased margin requirements in respect of the Convergenet SSFs, placed Yellow Star under significant financial stress to meet its variation margin obligations.

3. The Agreed Contraventions

3.1. In respect of the trades on 15 and 30 December 2008 (counts 1 and 6) referred to in Annexure "A", attached hereto, the Respondent admits that he



contravened Section 75(1)(a) read with sections 75(3)(c) of the Act in that he, acting in common purpose with George, used and knowingly participated in a manipulative, improper, false and deceptive trading practice:

3.1.1. By instructing and approving the entry of orders to buy Convergenet shares at successively higher prices for the purpose of unduly influencing the market price of the Convergenet share.

3.1.2. His orders matched resulting in the matched trades referred to in Annexure "A" that unduly influenced the market price of Convergenet.

3.1.3. He purchased these shares on behalf of Yellow Star.

3.1.4. As a result, these trades created a false or deceptive appearance of the trading activity in connection with the Convergenet share and created an artificial price for the Convergenet share.

3.2. In respect of the trade on 18 December 2008 referred to in Annexure "A" the Respondent admits that he, acting in common purpose with George, contravened Section 75(1)(a) read with sections 75(3)(g) of the Act in that he used and knowingly participated in a manipulative, improper, false and deceptive trading practice:

3.2.1. By instructing and approving the entry of the order near the close of market, the purpose of which was to maintain the market price of Convergenet at an artificial price.

3.2.2. His order matched resulting in the matched trade referred to in Annexure "A" that caused the market price of Convergenet share to be maintained at an artificial price.

3.2.3. These shares were purchased on behalf of Yellow Star.

3.2.4. As a result, this trade created a false or deceptive appearance of the trading activity in connection with the Convergenet share and created an artificial price for the Convergenet share.

3.3. In respect of the trades on 19 December 2008 referred to in Annexure "A" the Respondent admits that he, acting in common purpose with George, contravened Section 75(1)(a) read with sections 75(3)(d) of the Act in that he used and knowingly participated in a manipulative, improper, false and deceptive trading practice:

3.3.1. By instructing and approving the entry of the order near the close of market, the primary purpose of which was to cause the closing price of the Convergenet share to change to a higher price and/or to maintain the closing share price.

3.3.2. His order successfully matched resulting in the matched trade referred to in Annexure "A". His order caused the share price of Convergenet to close at a price that was higher than it would have closed for that particular day.

3.3.3. He purchased these shares on behalf of Yellowstar.

3.3.4. As a result, this trade created a false or deceptive appearance of the trading activity in connection with the Convergenet share and created an artificial price for the Convergenet share.

3.4. In respect of the trades on 22, 24, 30 (count 7) and 31 December 2008 referred to in Annexure "A" the Respondent admits that he, acting in common purpose with George, contravened Section 75(1)(a) read with sections 75(3)(d) of the Act in that he knowingly participated in the use of a manipulative, improper, false and deceptive trading practice:

3.4.1. By approving the entry of orders by George near the close of market, the primary purpose of which was to cause the closing price of the

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Convergenet share to change to a higher price or in certain instances to maintain the closing share price.

3.4.2. These orders successfully matched resulting in the matched trades referred to in Annexure "A". These orders caused the share price of Convergenet to close at a price that was higher than it would have closed for that particular day.

3.4.3. These shares were purchased for and on behalf of Yellow Star and in certain instances other clients of TAM.

3.4.4. As a result, these trades created a false or deceptive appearance of the trading activity in connection with the Convergenet share and created an artificial price for the Convergenet share.

3.5. The purpose of causing the shares to trade at a higher price or to close at a higher price or to maintain the closing price was to support the Convergenet share price and to benefit Yellow Star that had a significant exposure to the Convergenet shares, SSFs and the consequent exposure to variation margin obligations. These transactions benefited Yellow Star in that it either avoided or paid a reduced variation margin in respect of its Convergenet SSFs.

4. Mitigating Circumstances

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

4.2. The Respondent incurred a loss of approximately R86 million due to the Convergenet SSF exposure. This occurred through some 25 000 000 Convergenet shares over which single stock future contracts were concluded and of which the Respondent was aware. In addition this loss was also comprised of an additional 55 000 000 Convergenet shares over which SSFs were concluded, the existence of which the Respondent had not sanctioned, nor was he aware of.

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4.3. The Respondent has accepted responsibility for his actions and has shown deep remorse for having contravened the Act.

4.4. 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.

4.5. The Respondent has not been found to have previously breached any provisions of the Act by the Enforcement Committee.

5. Aggravating Circumstances

5.1. The Respondent's trades created a false or deceptive appearance of the trading activity in connection with the Convergenet share.

5.2. The Respondent's trades created an artificial price for the Convergenet share.

5.3. The Respondent's trades compromised the integrity of the South African financial markets.

6. The Agreed Penalty

6.1. The Respondent hereby tenders to pay a penalty of Seven hundred and fifty thousand rand (R750 000) to be paid within 10 working days from the date the settlement agreement is made an order of the Enforcement Committee.

6.2. The Applicants acceptance of the amount offered by the Respondent is subject to approval by the Enforcement Committee.

6.3. 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.



7. Other Conditions

7.1. 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.

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

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

7.4. 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:

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

7.4.2. The Respondent
C/O Gary Rachbuch & Associates
2 Third Avenue
Highlands North
Johannesburg


By email: litigation@gralaw.co.za

Signed at Pretoria on this the 05 day of October 2017.



FOR AND ON BEHALF
OF THE APPLICANTS

Signed at SAMRANA on this the 1 day of SEPTEMBER 2017.


H VANDYK

ConvergeNet Holdings Limited
 SASFIN+ IMARA DECEMBER TRADES
 HANNO VAN DYK

Key: trades highlighted refer to the trades completed in the Yellow Star account held at Sasfin

Count	Date	Time	BID ENTERED		TRADE		Closing share price (c)
			volume	price (c)	volume	price (c)	
1	15-Dec-08	16:36:29	311 700	116	16:36:29	112 500	108
						57 300	111
						17 800	111
						100 000	112
						17 000	116
						12 100	116
							117
2	18-Dec-08	16:48:50	10 000	112	16:48:50	10 000	112
3	19-Dec-08	16:58:23	435 000	117	17:00:21	435 000	117
4	22-Dec-08	16:59:37	265 000	MKT	17:00:18	265 000	116
							116
5	24-Dec-08	11:59:47	325 000	MKT	12:00:05	325 000	114
							114
6	30-Dec-08	14:23:40	100 000	108	14:23:40	50 000	108
		14:24:04	1000	109		50 000	108
						1 000	109
7	30-Dec-08	16:59:48	100 000	MKT	17:00:04	100 000	109
							109
8	31-Dec-08	11:47:52	150 000	108	11:47:52	106 000	107
					11:47:52	35 000	108
					11:48:21	9 000	108
							107