

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 NUMBER: **09/2016**

In the matter between:

THE DIRECTORATE OF MARKET ABUSE

First Applicant

THE FINANCIAL SERVICES BOARD

Second Applicant

and

WOLFGANG HELMUT REINECKE

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) (b) of the Financial Markets Act, 19 of 2012. I hereby impose a penalty of R25 000 (Twenty Five Thousand Rand) on the Respondent.

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

Signed at **PRETORIA** on the ...¹⁴... day of **June 2016**.


.....
C F Eloff

Chairperson of the Enforcement Committee

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In the matter of:

**THE DIRECTORATE OF MARKET ABUSE
THE FINANCIAL SERVICES BOARD
and
WOLFGANG REINECKE**

First Applicant
Second Applicant

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 Directorate of Market Abuse (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 an account in the name of Mr Wolfgang Reinecke ("the Respondent") in the shares of Comair Limited ("Comair").
- 1.2. Upon completion of the investigation the First Applicant, as empowered by section 6A (2) of the Financial Institutions (Protection of Funds) Act, 28 of 2001 ("the FI Act"), referred the matter to the Enforcement Committee of the Financial Services Board ("the EC"). The Applicants seek an administrative penalty to be imposed on the Respondent.

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- 1.3. The Respondent wishes for the matter to be dealt with by way of an order pursuant to a settlement agreement as contemplated in section 6(B)(7)(a) of the FI Act.
- 1.4. The parties have agreed to the facts set out below as the basis of the settlement.

2. The Parties

- 2.1. The First Applicant is the Directorate of Market Abuse ("the DMA"), a committee of the Financial Services Board ("the FSB") established in terms of section 85(1)(a) of the FMA. The First Applicant exercises the powers of the FSB to investigate any matter relating to market abuse including insider trading, and to refer matters relating to market abuse to the EC.
- 2.2. 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, including the FMA.
- 2.3. 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 First Applicant.
- 2.4. The Respondent is Mr Wolfgang Reinecke, an adult male businessman.
- 2.5. At all times relevant to this matter Comair shares were listed on the Johannesburg Stock Exchange, a regulated market as contemplated by section 77 of the FMA.

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3. The Contraventions

- 3.1. During the period from 13 January to 21 January 2015 the Respondent had access to an Over the Counter platform to buy large volumes of Contracts for Difference (CFDs) including Comair CFDs.
- 3.2. CFDs are contracts between a market participant and a CFD provider wherein the parties agree to exchange the difference between the current value of the underlying share (In this case Comair) and the value of the share at the expiry date of the CFD. A holder of a CFD does not own the underlying share but has exposure to the full price movement of the share whilst using less capital.
- 3.3. During the period mentioned in paragraph 3.1. above, the Respondent as a buyer of Comair CFDs was required to pay 25% of the Comair share price. However, on acquisition of the CFDs he would obtain full exposure to movements in the Comair share price.
- 3.4. During the period mentioned in paragraph 3.1. above the Respondent placed orders in the JSE Equity market to trade in a single Comair share at each instance listed in **Table 1** below:

Table 1


Date	Order	Price (c)	Quantity
13/01/2015	Sell	515	1
14/01/2015	Sell	548	1
14/01/2015	Sell	548	1
14/01/2015	Buy	548	1
15/01/2015	Sell	567	1
15/01/2015	Sell	567	1
21/01/2015	Sell	562	1
21/01/2015	Sell	562	1
21/01/2015	Sell	559	1
21/01/2015	Sell	561	1



- 3.5. The purpose of his orders was to exploit the interrelatedness between the price of the Comair share and the pricing of Comair CFDs by enabling him to acquire Comair CFDs at a lower price than he otherwise would have in the absence of the orders. The respondent accepts that his orders created a false sense of supply or demand / an artificial price for the Comair share.
- 3.6. The Respondent accepts that he ought reasonably to have known that his conduct constituted a prohibited trading practice as provided in section 80 (1) (b) of the FMA.

4. The Mitigating Circumstances

- 4.1. The Respondent was an inexperienced investor who was not fully aware of the wrongfulness of his action, once he was made aware of the consequences of his conduct he immediately ceased such conduct;
- 4.2. The Respondent has expressed regret and has co-operated with the Applicants to bring this matter to finality;
- 4.3. The Respondent's main purpose with the transactions related to his CFD trading, and it was not to affect other market participants in any manner whatsoever; and



- 4.4. The Respondent has never been found to have breached the FMA prior to this matter.

5. The agreed penalty

- 5.1. In terms of section 6B(7)(a) of the FI Act, the parties agreed that the Respondent will pay a penalty of R25 000 (twenty five thousand rand) in settlement of this matter, inclusive of costs, by not later than 30 July 2016.
- 5.2. 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").

6. Other conditions

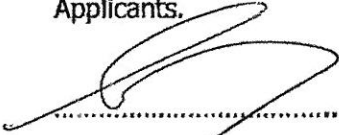
- 6.1. This agreement is subject to approval by the EC and the parties specifically record that they are aware of the possibility that the EC may not accept the terms of this agreement. In such an event this agreement will be null and void and neither party will have any rights or obligations in terms hereof nor will this document be capable of being used in any proceedings against the Respondent in the future.
- 6.2. 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 and interest on the outstanding amount, at the rate prescribed in terms of section 1 (2) of the Prescribed Rate of Interest Act, 55 of 1975.

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- 6.3. 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;
- 6.4. Any receipt of a payment by the FSB after the due date shall be without prejudice to any of the rights of the FSB;
- 6.5. This agreement constitutes the whole agreement between the parties in respect of the offer to pay the penalty and costs.
- 6.6. The parties elect the addresses below as their *domicilium citandi et executandi* for the purposes of service of the EC order and any Notice or pleadings related to the breach of this agreement:
 - 6.6.1. The Financial Services Board
Block B, Riverwalk Office Park
No. 41 Matroosberg Road
Ashlea Gardens
Pretoria
 - 6.6.2. W Reinecke
13 Kingston Forest
Sloane Street
Bryanston
2191
Johannesburg

A handwritten signature in black ink, consisting of a stylized 'R' followed by a 'D' with a flourish.

Signed at PRETORIA on this the of May 2016 on behalf of the First and second Applicants.



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CK Chanetsa

Signed at *JAB* on this the *31st* of May 2016.



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W Reinecke