**IN THE PROCEEDINGS BEFORE THE ENFORCEMENT COMMITTEE**

**HELD AT PRETORIA ON 11 AUGUST 2016**

**CASE NUMBER: 19/2015**

In matter of:

**THE DIRECTORATE OF MARKET ABUSE** **APPLICANT**

and

**BRIAN RICHARD GOLDING** **RESPONDENT**

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## DETERMINATION

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**DURING THE HEARING** held at **Pretoria** on **11 August 2016** the Enforcement Committee, as contemplated in terms of section 6B(7)(a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001, determined that the Respondent contravened section 75(3) of the Securities Services Act, No 36 of 2006 and section 80(3) of the Financial Markets Act, No 19 of 2007.

**IT IS THEREFORE DETERMINED THAT** the Respondent will a pay an amount of R200 000 together with costs of the enquiry, including all legal fees and the fees of the investigators to the Financial Services Board.

CHAIRPERSON: The committee has come to a conclusion and I shall endeavour to set out briefly what our reasing is. This committee is entrusted with the task of considering whether two charges brought against the respondent, Mr B R Golding, by the Financial Services
5 Board and its Directorate of Market Abuse, of contravening portions of Section 75 of the Securities Services Act No. 36 of 2006 and portions of Section 80 of the Financial Markets Act 19 of 2007 have been established.

The conduct attributed to the respondents is commonly referred
10 to as market manipulation. It was prohibited by Section 75 of the Securities Services Act 36 of 2004, until its repeal with effect from 3 June 2013 by the Financial Markets Act of 2013. Thereafter the conduct under discussion was prohibited by Section 80 of the last mentioned Act. The prohibition in most of these sections is similarly
15 worded.

After the repeal of the first mentioned Act, the applicants were entitled to take steps in regard to conduct committed while it was in force. As from 3 June 2013 the applicants had to take steps in terms of Section 80 of the latter statute. The charge sheet correctly relies on
20 both sections.

The conduct primarily prohibited by Section 75(1) is *"the use of any manipulative, improper, false or deceptive practice of trading*

*in a security listed on a regulated market, which practice creates or might create – (i) a false or deceptive appearance of the trading activity in connection with; or (ii) an artificial price for that security".* It should, of course, be recorded that the market in which
5 the respondent dealt, the Johannesburg Stock Exchange, is a regulated market.

Of great importance is another subsection. Section 75(3) provides. *"(3), without limiting the generality of subsection (1), the following are deemed to be manipulative, improper, false or*
10 *deceptive trading practices, (a) ... (b) ... (c) ... (d), approving or entering on a regulated market an order at or near the close of the market, the primary purpose of which is to change or maintain the closing price of a security listed in that manner".*

The conduct prohibited by Section 80 is to *"use or participate*
15 *in any practice, which has created or is likely to have the effect of creating – (i) a false or deceptive appearance of the demand for supply or trading activity in connection with; or (ii) an artificial price for that security".* Section 80(3) has a provision similar to the provision in Section 75.

20 I need at this stage to explain that the ultimate decision of the Committee is founded on sections 75(3) and 80(3).

The essence of the conduct mainly attributed to the respondent is that in the period 1 May 2013 to 30 June 2013 he placed on the equity market, the Johannesburg Stock Exchange, buying orders or a range of such orders, and in consequence of those orders determined the
5 daily ruling price of the share and increased the share price or at least maintained and thereby created a false or deceptive appearance of the trading and volume of trade of Miranda shares to create artificial prices for those shares.

The security in this enquiry is the shareholding of a company
10 styled Miranda Mineral Holdings Ltd, a mineral exploration investment and holding company, which has acquired a listing on the JSE in 2005. That listing was suspended from trade by the JSE in September 2014, after the enquiries to which I shall refer later.

The evidence adduced in support of the charge was largely that
15 of Mr C K Chanetsa who was the deputy executive officer of the Investment Institution Department of the Financial Services Board and also the Acting Chairman of the Directorate of Market Abuse. His evidence was supported by the affidavit of his investigators, Mr E E Van Kerken, Ms P Pillay and by the affidavit of the witness,
20 Redman, who was a senior technical advisor of the Market Regulation Division of the JSE.

Mr Chanetsa had access to the electronic records of the JSE. He had transcripts before him of statements made by the respondent during the investigations conducted by the Directorate of Market Abuse and he had documentary evidence obtained under a subpoena 5 issued by the Directorate of Market Abuse, Section 84(3)(a).

I return to Miranda Mineral Investments. The respondent was alleged to own 3.5 million shares in the company. In his answering affidavit he said that he and his family held 2 451 527 shares. The respondent filed an affidavit and made use of an expert, Mr H E Van 10 Rensburg. The applicants in their replying affidavit made use of an expert, Mr Saloms and again referred to the evidence of Mr Redman.

A great deal of the evidence related to the activities of the company styled Golding Torr and De Decker (Pty) Ltd, a small firm with one dealer who traded in the equity market and of whom the 15 respondent was also a trader. He held 35% of the equity of the company during the period alleged in the charge sheet and he was its CEO, its Chief Executive Officer. It owned many millions of Miranda Shares.

It is convenient that I now express our concerns regarding the 20 explanation of the respondent for some of the statements or factors admitted at the interrogation at the request of the JSE. He testified that had he known that he was going to be interrogated as part of an

investigation into the possibility that he was guilty of market manipulation, he would have engaged counsel, refreshed his memory and prepared himself adequately for the investigation. He said that one of the investigators, Ms Pillay, told him that all that was going to 5 be done would be an *"informal chat"*. The committee is convinced that this explanation is false. We refer to all the correspondence and allegations, which couldn't be denied, made in the applicant's Heads of Argument.

I return to the question of the applicability of Section 75(3) and 10 Section 80(3), which I quoted earlier. It will be recalled that the sub-section's provide that when a person places an order at, or near the close of the market *"the primary purpose of which is to change or maintain the closing price of a security"*, such conduct will be *"deemed to be manipulative, improper, false or deceptive practices"*. 15 The requirement that the primary purpose should be to change or maintain the closing price should present no difficulty and it seems to me that I should deal with that at once.

The committee has considered all the evidential material. So much of it is common cause and beyond dispute. Our task is in a is 20 largely that of inference from the fact and weighing up of the probabilities. The following can be stated to have been adequately supported by the evidence: (a) eight of these transactions were

executed during the closing auction period and six were executed at approximately 16:49, very close to the closing auction.

I need at this stage to comment that this excludes two transactions which took place on the 27th of June 2013 and which are
5 referred to in the footnote of page 058. As far as those trades are concerned, we consider that in the interest of justice those should be erased from consideration and be dismissed.

(b) In all the trades that the respondent manage, but for 27 June, the closing price of the Miranda shares were influenced
10 positively. On days that the share price closed higher than the previous close or closed at the same level as the previous day, the respondent did not trade in the share, although there were numerous shares on offer and sufficient funds were available.

The details of the various trades establish firmly what was
15 contended for by counsel for the applicants that the respondent was anxious to increase or avoid a decrease in the price of the Miranda shares.

That leads us to the conclusion that the second portion of Sections 75(3) and 83(3) have been establishing appropriately on a
20 balance of probabilities. In other words, we find that by approving or entering into the regulated market at or near the close of the market the primary purpose of which is to change or maintain the closing

price of a security listed on that market, we find that there can be little doubt that that was the primary purpose and that attracts the consequence in subsection (3) that *"the following are deemed to be manipulative, improper, false or deceptive trading practices"*.

5 That means that by invoking the deeming clause of Section 75(3) and 80(3), the contravention of 75(1) and Section 80(1) have been fully established, except for the two trades mentioned earlier. Accordingly it is inevitable that the respondent is found guilty as charged.

10 I should add that he did not in his interrogation find himself able to give an acceptable reason for the manner in which he selected the quantity of shares that he purchased, except that it was a complete thumb suck, nor could he explain why he traded as he did, except that he purchased shares on offer and was merely averaging the share.

15 The totality of the evidence appeared to the committee that in accordance with the charges the respondent, in May and June 2013, on fourteen occasions indulged in a practice which was improper, false and deceptive and which created or might have created (i) a false or deceptive appearance of the trading activity in the shares of 20 the company, Miranda Mineral Holdings Ltd and (ii) an artificial price of that security.

That creates the need for establishing an administrative penalty. Various factors were mentioned. We take note of all the statutory provisions, which have been quoted. As far as the respondent is concerned, he had a clean record, co-operated fully and it is also a 5 fact that the difference between the amount he offered and the then prevailing price was slight. We are dealing here with small figures and this is not at all to be compared to the cases that have been quoted to us in which penalties of several million Rand were imposed.

We have taken account of all these factors. We are acutely 10 aware thereof that this is a serious contravention and the message should go out that a contravention will lead to serious consequences. Having regard to all these factors, we impose an administrative fine of R200 000.00.

Lastly, the Act entitles the applicants to ask for costs. The 15 committee orders the respondent to pay the costs of the enquiry, including legal expenses and the fees of the investigators in this matter. Thank you.

***A D J O U R N M E N T***