CHAIRPERSON: I shall proceed to give reasons, which by reason of the default of some of the respondents, will be short. This Committee is entrusted with the task of considering whether any one or more of several charges of trade abuse brought against the respondents have been established. There are three charges, and charges 1 and 2 are accompanied by alternatives. They are all mainly based on the provisions of Section 75 of the Securities Services Act, which carries the heading *"prohibited trading practices"*.

Subsection (1) forbids the participation in 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 an artificial price for that security. Subsection (b) of Section 1 forbids the placing of an order to buy or sell securities, which in his or her knowledge will, if executed, have the effect contemplated in paragraph (a) or create an artificial price for the security. Subsection (b) of subsection (1) forbids the placing of any orders to buy or sell securities which, if executed, will have the effect contemplated in para (a), or an artificial price for the security.

Subsection (3) sets out descriptions of trading practices, which are deemed to be manipulative, improper, false or deceptive trading practices. Section 75 is lucid and clear. The meaning of "manipulation" follows from the use of the words in subsection (i): *"...creating a false or deceptive appearance of the trading activity in connection with, or an artificial price for that security"*. This is in line with decisions of the courts. An example is the following dictum in Director of Public Prosecutions v JM (2013) HCA 30, M 73/2012): *"...market manipulation is centrally concerned with conduct, intentionaly engaged in, which has resulted in a price which does not reflect the forces of supply and demand."*

The first main charge attributes to all of the respondents the contravention of the provisions of Section 75(1) just referred to. The essence of the charge is that the first respondent, in concert with the

other respondents during the period 26 November 2006 to 28 November 2008, indulged in market manipulation with the shares a company, which I shall for the sake of convenience refer to as Acc-Ross, with the common purpose of creating a false or deceiptive appearance of its trading activities or price.

In view of the conclusion reached herein, it is unnecessary to set out details of the two alternatives to Count 1. As far as counts 2 and 3 are concerned, the Committee concluded that some duplication or splitting of charges was brought about. In the interest of justice and fairness, the Committee decided to exclude those charges from further consideration.

The evidential material relied on is set out in the main founding affidavit made by Mr CK Chanetsa. He was the Deputy Executive Officer of the Investment's Institution Department of the Financial Services Board. He is also the acting Chairman of the Directorate of Market Abuse. He made use of the investigators who performed their task under his supervision and he familiarised himself with the evidence unearthed by the investigators.

He had access to the electronic records of the JSE and he could and did determine the prices at which Acc-Ross shares were traded and by whom. He had before him tables reflecting the trading history and the trading system of a number of role players. Many of the role players, including the four respondents, were interrogated by the enquiry conducted under the statutory provisions applicable to the Financial Services Board. They made their statements under oath. The persons interrogated were also asked to produce documentation to which Mr Chanetsa had access.

He also had access to documentation of several of the companies involved. He furthermore had the confirming affidavit of the investigator, Pascoe, and he also exercised his powers under Section 82(2)(d) of the Securities Services Act to issue subpoenas, which were necessary.

The first and second respondents did not enter and appearance to defend or file answering affidavits. The third and fourth respondents filed signed admissions. Therein they had set out the history of their involvement in the enterprise initiated and governed by the first respondent. In paragraph 5.25 they say, *"the third and fourth respondents, during the period 26 November 2006 to October 2008, as a result of the first respondent's general instructions, participated in the use of a manipulative, improper, false or deceptive practice of trading in the Acc-Ross share for the purpose of increasing or alternatively maintaining the Acc-Ross share price".*

The affidavit of Mr Chanetsa is clear and is adequately supported. He sets out the history of the establishment of Acc-Ross by the first and second respondents. He refers to the role played by Jansk International Ltd, ("Jansk"). It was a foreign company. It seemed it came under a dark cloud when an instruction from the Financial Services Board was issued. They were then forbidden to trade in South Africa, but prior to that the first respondent acquired the power to act on Jansk's behalf. An earlier enquiry by the Financial Services Board reveals that the first respondent dealt with Jansk's investments as if they were his own. Jansk held 260 million Acc-Ross shares.

The evidence was also that the first respondent acquired a number of shelf companies of which Jansk was the shareholder. They were employed to acquire Acc-Ross single stock future shares.

The evidence establishes that Acc-Ross, which was formerly a company with a different name, was established in 2005 with the first and the second respondents as the main shareholders. It was desirous of attaining a listing on the Johannesburg Stock Exchange and an application of that sort was made. The response of the JSE was that there were objections against the participation of the first respondent by reason of a prior difficulty, which he encountered sometime ago.

In order to meet this difficulty, the first respondent got rid of his shares, which were ultimately acquired by a trust called the

Quattro Trust belonging to the second respondent. He, however, acquired a leading position in a company called Gardener Ross a subsidiary of Acc-Ross by means of which he was able to control the activities of Acc-Ross.

The shares of Acc-Ross acquired a listing on 16 February 2006. Its issued share capital was 877 930 034. The family trust of the second respondent (the Quattro Trust) was the holder of the majority of Acc-Ross shares. The first respondent was a trustee of the Trust. Jansk, who was controlled by the first respondent, was the holder of 270 000 000 shares. Clearly the first respondent at all relative times had a controlling interest in the activities of the company. But, to return to the consequences of the listing. The shares were listed at 100 cps. The ruling price on the day was 110cps. But then the market price of the shares plummitted. Within 5 months after the listing the share prices stood at (as at 17 July 2006)at 13 cps. During the next 95 days the average market price stood at 18 cps.

The evidence presented to the Committee clearly established that at some stage in 2006 the first respondent, with the connivance of the second respondent, decided to embark on schemes and arrangements designed to create the impression that the market price of Acc-Ross shares and trading activity were substantially higher than was attained soon after the listing. The prices at which Acc-Ross shares and Acc-Ross, SSF's were purchased moved consistently at prices set by the first respondent. In order to achieve the objective of creating the impression of substantial improvement, the first respondent made use of respondents 3 and 4. The details of the extent of their participation are fully set out in the affidavit of Mr Chanetsa. The admissions statement summarises to what extent they and other companies were used.

I interpose to say that the factual averments made in the admissions statement accord with what was testified to by Mr Chanetsa. It is in a sence a précis of that which was testified to. For ease of understanding I now present a summary of the statement.

The 3rd and 4th respondents were directors of Cortex Securities ("Cortex"). The JSE approved Cortex as a broking and non-clearing financial derivatives and products member of the JSE. Cortex was therefore able to offer its clients the opportunity to invest in SSF contracts. They say that during the period November 2006 to March 2008, the first respondent gave verbal instruction to them and Cortex employees to buy Acc-Ross shares at prices he specified. They add that tho their knowledge he used a consortium of 5 companies to purchase Acc-Ross SSFs while these purchases were funded by Jansk, a company under the direct control of the first respondent. The first respondent caused the purchase of SSF contracts and these contracts were allocated to Cortex accounts opened in the name of the consortium, as well as further Cortex accounts, directly and indirectly under the control fo the first respondent.

Those contracts and accounts were all long positions, and thereafter the holders of SSF contracts were exposed to huge gains or losses, depending on the circumstances.

As a result of the said instruction of the first respondent, the 3rd and 4th respondents caused employees of Cortex to purchase, per day, in the equity market most of the available Acc-Ross SSF shares in the name of Syfrets/Nedbank. The shares were purchased randomly and throughout the day, with the most volume acquired during the daily closing auction. In the result the ruling price of Acc-Ross shares was in the most instances, caused by Cortex. Cortex was the major buyer of Acc-Ross shares.

The two respondents go on to aver that as a result of the general instruction of the first respondent, at least 1 045 054 800 Acc-Ross SSF shares were acquired in the Syfrets/Nedbank account, of which at least 785 054 800 shares were bought by Cortex in the name of Syfrets/Nedbank. From the 1 045 054 800 Acc-Ross shares, at least 8 600 220 Acc-Ross contracts were allocated accounts, held in the names of the companies of the consortium, which in turn caused Cortex to purchase at least 860 022 000 Acc-Ross shares, while

funded by Jansk. The two respondents conclude that as a result of the general instruction and compliance therewith, Cortex caused the fixing of the ruling price each day. And the artificial price was sustained. They add that the first respondent was able to sustain the artificial share price because of his control of the Cortex contracts.

They then make an important statement as to what occurred in October and November 2008. In that period at least 11 611 757 Acc-Ross SSF contracts in Cortex accounts under direct control of the first respondent, were transferred by the 3rd and 4th respondents to a company styled Ukwanda Holdings (Pty) Ltd ("Ukwanda").

This was done in order for the first respondent to take control over at least 1 181 175 700 Acc-Ross shares, and to ensure that Acc-Ross shares were not sold in the market.

The respondents end off by saying that towards the end they informed the first respondent that the Acc-Ross SSF contracts would no longer be cleared. The result was that it was not longer possible to sustain the artificial demand for Acc-Ross. The market price dropped substantially.

I wish now to call on my one panel member to deal briefly with what he considered to be the real essence of what went on.

Mr B Johnson: Thank you, Mr Chairman. What actually happened is that Gardener Ross had preference shares and they then became shareholders of Acc-Ross. I believe that the first respondent then undertook to get payment for them of R1.00 each. The share price then dropped. Now, what happens with any new issue is you get what they call a free float and the free float are the shares that are not held in a controlling block or held by a designated shareholder who could hold them for a long period of time in escrow or whatever.

As long as you've got a free float, you will find, especially with the new issue, the shares will be dribbled into the market and it will create a selling pressure, which will keep the shares low. So, that's why the first respondent went into the market and got Cortex to buy the shares, because with the single stock future, a script settled single

stock future is very different to a normal single stock future in that it's settled in script. Often they are settled in cash. So, this was really like a carry transaction rather than anything else.

So, what they did is they went into the market and they had to get the price up. So, Cortex would then buy the shares, sell them across to Syfrets Nedbank and they would then issue the single stock futures. With the other associated shareholders, they then sold their shares to Nedbank Syfrets, realised the selling price of those, part of which went back into the initial margin of the single stock futures, which were being created. So, they had a buffer there, which they could use to buy further single stock futures and put up the initial margin.

That then carried on for a while and the share price increased. All of sudden you then got to a position where the single stock futures were such a big position in the market that any drop in the price of Acc-Ross would create the liability of the holders of the SSFs to actually pay in variation margin. They couldn't afford to do that. Why? Because they had drained funds off for payments to various different people who had done services and they were owed money. So, that then passed out.

So, they had to make sure that there was an ever increasing price to make sure that the variation margins flowed from the writer of the SSF to the holders, which was them, because they couldn't afford to make up the difference. That is the essence of the whole thing and that is why I believe there was the manipulation of the price, was to keep the variation margin flowing out rather than flowing back.

When they couldn't at the end carry on with that thing, they went into the market to try and buy the shares, ran out of money, bang, next thing it is was back. So, that's the sort of loop as to what I think actually happened and that is the way I read this and interpreted it. So, your questioning was correct. You went to the nub of the matter, but you didn't know why you were actually getting there, I

don't think. So, I think that that really completes the process for you. So you know why are asking the questions that you asked, if that makes sense.

The Committee concludes that it plainly established that the market price of the Acc-Ross shares and probably their intrinsic value was roundabout 18 cps as at 2006. It was certainly not near the prices attained in the period 2006 to 2008. And when the manipulative activities lessened the market price dropped very substantially. The inference is inevitable that the manipulative practises employed by the respondents were the cause of the artificial gains. The respondent plainly adopted practises, within the meaning of Section 75 to establish false impressions in the mind of traders of the JSE, of the real value of the shares, and of its trading activity.

The respondents are found guilty as charged on the first count.

I now address the question of the administrative penalty. I firstly deal with the position of the first respondent. It is perfectly plain that what was being committed was a vast fraud involving millions of shares and millions of Rand. It was carefully contrived and pursued for a few years. He was throughout the mastermind, the prime mover and organisor of activities conducted on a tremendous scale, with millions of shares. There was no proof of actual loss by anybody, but the potential of loss was clear.

I must confess that in the many years that I've been involved as Chairman of the Enforcement Committee, I have seldom come across a case with so many aggravating features. In the course of argument reference was made to an award made of an administrative penalty of R5 million. I think it was then the high watermark of awards of this nature. I'm familiar with the circumstances of that case and it doesn't come close to the aggravating features and the potential harm that was proved in this case.

It is important that the reliability and integrity of institutions like the JSE should be maintained. The message must go out that contraventions of the sort found by this committee will attract serious

consequences. The question of personal circumstances has, of course, to be considered. We have the difficulty that neither the first nor the second respondents took us into their confidence in setting out their personal circumstances.

The motive of the various contraventions was plain. It was pure greed. It was done without regard or complete disregard of the potential harm of others. The committee has considered all the relevant features and has concluded that an appropriate administrative penalty for first respondent is R10 million.

I turn then to the question of the second respondent. It is clear that he played a role in the establishment of Acc-Ross and the conduct of its affairs. It is plain, however, that his activities were not near that of the first respondent who was the mastermind and chief organiser of all that went on. It is a clear inference from the facts of the case, however, that he, within limits, contrived to assist the first respondents in his manipulations.

He also had the difficulty that he did not play open cards with the Financial Services Board. He failed, to respond to answers or to give details and he only has himself to blame if an adverse view is taken by the Committee in regard to him. In our view a penalty of R3 million is indicated.

As far as the two other respondents are concerned, they assumed reliability for a penalty of R1 million each. We have some difficulty with the question whether that was adequate, but in view of the role they played in making contributions to this matter and the concessions which they made, the Committee considers that it will impose an administrative penalty on respondents three and four of R1 million each.

It remains to deal with the question of costs. Costs were sought and notice was given to the respondents. It seems clear that if the respondents had played open cards at the outset of this matter, the duration of this enquiry would have been limited. It is only because of the powers which it had that the Directorate of Market Abuse could

and did present this case. The respondents are ordered jointly and severally, the one paying, the other to be absolved, to pay the costs of this inquiry, which includes all legal costs, the fees of the panel members and any other expenses incurred in the preparation of the case. That concludes my reasons.

***ADJOURNMENT***