THE FINANCIAL SECTOR CONDUCT AUTHORITY

In the matter between:

FINANCIAL SECTOR CONDUCT AUTHORITY

and

MARKUS JOHANNES JOOSTE

ADMINISTRATIVE PENALTY ORDER IN TERMS OF SECTION 167 OF THE FINANCIAL SECTOR REGULATION ACT NO 9 OF 2017

INTRODUCTION

1. This is an administrative penalty order in terms of section 167 of the Financial Sector Regulation Act, 9 of 2017 (the Financial Sector Act)[1] resulting from contraventions of the insider trading prohibitions contained in section 78 of the Financial Markets Act, 19 of 2012 (the Financial Markets Act) by Mr Markus Johannes Jooste (Mr Jooste) in respect of share transactions in Steinhoff International Holdings NV (Steinhoff) during November and December 2017.

[1] "167. ***Administrative penalties***
The responsible authority for a financial sector law may, by order served on a person, impose on the person an appropriate administrative penalty, that must be paid to the financial sector regulator, if the person: -
(a) has contravened a financial sector law;"

2. The Financial Sector Conduct Authority (the FSCA) investigated possible insider trading in contravention of section 78 of the Financial Markets Act; which investigation found that on 30 November 2017, shortly before a significant decrease in the market value of Steinhoff shares, Mr Jooste was privy to inside information regarding Steinhoff. Whilst privy to this information, Mr Jooste disclosed some of the information in a "warning SMS". He encouraged some individuals to dispose of their Steinhoff shares before the publication of the inside information to the rest of the market.

3. The FSCA's investigation concluded that Mr Jooste breached sections 78(4)(a) and 78(5) of the Financial Markets Act[2]. The sections prohibit, respectively, an insider from disclosing inside information and/or encouraging or discouraging another person to deal in securities which the inside information relates to.

4. On 14 February 2019, the FSCA addressed a letter to Mr Jooste, care of his attorneys, advising Mr Jooste of the FSCA's intention to impose an administrative

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[2] "78*(4)*
(a) An insider who knows that he or she has inside information and who discloses the inside information to another person, commits an offence.
(b) An insider is, despite paragraph (a), not guilty of the offence contemplated in that paragraph if such insider proves on a balance of probabilities that he or she disclosed the inside information because it was necessary to do so for the purpose of the proper performance of the functions of his or her employment, office or profession in circumstances unrelated to dealing in any security listed on a regulated market or trading with a derivative instrument related to such a security and that he or she at the same time disclosed that the information was inside information.
(5) An insider who knows that he or she has inside information and who encourages or causes another person to deal or discourages or stops another person from dealing in the securities listed on a regulated market or in derivative instruments related to such securities, to which the inside information relates or which are likely to be affected by it, commits an offence."

penalty for contravening sections 78(4)(a) and (5) of the Financial Markets Act. The FSCA invited Mr Jooste to make submissions on the content of the letter, the investigation report and the proposed administrative penalty.

5. On 29 October 2020, the FSCA considered the evidence at its disposal, including Mr Jooste's submissions, and concluded that Mr Jooste had contravened sections 78(4)(a) and (5) of the Financial Markets Act. The FCSA imposed, in terms of section 167(1) of the Financial Sector Act, read with section 82 of the Financial Markets Act, administrative penalties on Mr Jooste as follows:

5.1. An amount of R161 568 068;

5.2. Joint and several liability with Mr Jaco Swiegelaar (Mr Swiegelaar) and Ocsan Investment Enterprises (Pty) Limited (Ocsan) for the amounts of R18 328 and R38 622 374 respectively; and

5.3. Liability in respect of interest and costs as provided for in section 82(2)(c) and (d) and section 82(3) of the Financial Markets Act.

6. Mr Jooste applied to the Financial Services Tribunal (the Tribunal) for reconsideration of the FSCA's decision of 29 October 2020, and on 13 December 2021, the Tribunal found that:

6.1. Mr Jooste is, by definition, an insider (paragraph 66);

6.2. Mr Jooste was in possession of inside information in that on the morning of 30 November 2017, he knew that audit information had not been provided to Steinhoff's auditors, and could not be provided, because it did not exist, and he thus knew that Deloitte would seek to investigate and there was little, if any, prospect of the financial statements being published on time (paragraphs 69 and 70);

6.3. Mr Jooste's SMS messages to Mr Jaap du Toit (Mr du Toit), Mr Ockert Oosthuizen (Mr Oosthuizen) and Dr Gerhardus Burger (Dr Burger) were (i) from an insider, (ii) who knew that he had inside information and (iii) encouraged the recipients to deal in the Steinhoff securities by disposing of them (paragraph 77, 79 and 85);

6.4. Mr Jooste had therefore contravened section 78(5) of the Financial Markets Act in three instances, but not in respect of Mr Swiegelaar (paragraph 86);

6.5. Mr Jooste did not contravene section 78(4)(a) of the Financial Markets Act, because the SMS message did not contain information that was sufficiently specific or precise to constitute inside information (paragraphs 88 to 99).

7. The Tribunal upheld Mr Jooste's application for reconsideration, set the FSCA's decision aside, and referred the determination of an appropriate administrative penalty for the contravention of section 78(5) of the Financial Markets Act to the FSCA for reconsideration.

8. On 28 January 2022, Mr Jooste made submissions to the FSCA, which focused mainly on the implications of the Tribunal decision on an appropriate sanction by the FSCA. Mr Jooste emphasised that his submissions should not be construed as an acceptance of the Tribunal decision or any particular finding therein.

9. Having considered the evidence at its disposal, the Tribunal decision and Mr Jooste's submissions, the FSCA on 10 August 2022, notified Mr Jooste, through his attorneys, of its intention to impose a new administrative penalty of R20 000 000 on him for contravening section 78(5) of the Financial Markets Act in respect of the encouragement of Mr du Toit, Mr Oosthuizen and Dr Burger to sell their Steinhoff shares.

10. The FSCA also invited Mr Jooste to make further submissions on the proposed administrative penalty of R20 000 000 and liability in respect of interest and costs as provided for in sections 82(2)(c) and (d) and section 82(3) of the Financial Markets Act.

11. On 12 September 2022, the FSCA received Mr Jooste's further submissions. Mr Jooste reiterated that he is dissatisfied with the Tribunal decision in certain

respects and remains intent on applying for the judicial review of the Tribunal decision following the final determination by the FSCA and, possibly, the Tribunal decision on the administrative penalty imposed on him. Mr Jooste again stated that his submissions must not be construed as an acceptance of the Tribunal decision or any particular finding therein.

12. This Order sets out the FSCA's reasoning, having considered the evidence at its disposal, all of Mr Jooste's submissions, and the relevant considerations considered in arriving at an appropriate penalty.

THE FSCA'S MANDATE

13. The FSCA is established in terms of section 56 of the Financial Sector Act. It is a financial sector regulator whose objectives are to enhance and support the efficiency and integrity of financial markets, protect financial customers and assist in maintaining financial stability in South Africa.

14. The FSCA is entrusted with various statutory powers to meet its mandate, including the powers to conduct investigations and impose administrative sanctions where it detects breaches of financial sector laws.

15. The Financial Markets Act, a financial sector law administered by the FSCA, is specifically designed to ensure that South African financial markets are fair, efficient and transparent and aims to promote the international and domestic

competitiveness of South African financial markets.[3] To this end, and amongst other provisions, it prohibits conduct defined as market abuse, including insider trading-related conduct.[4]

16. Section 167 of the Financial Sector Act, read with section 82 of the Financial Markets Act, prescribes peremptory and discretionary considerations regarding determining and calculating administrative penalties resulting from insider trading-related breaches.

THE INVESTIGATION

17. The FSCA conducted the investigation pursuant to the powers provided in section 136(1)(a) of the Financial Sector Act and obtained statements under oath from persons who were reasonably believed to have information relevant to the investigation. Those persons included *inter alia* Steinhoff officers, the recipients of the warning SMS, and Mr Jooste.

18. The investigators, by notice contemplated under section 136(1)(a) of the Financial Sector Act, requested relevant documentary evidence from *inter alia* Steinhoff's auditors, the JSE Limited (the JSE), Cell - phone Network Service Providers, Steinhoff's officers and authorised members of the JSE.

[3] Section 2 of the Financial Markets Act.
[4] Market Abuse contraventions are set out in Chapter X of the Financial Markets Act.

19. Upon completion of its investigation, the FSCA considered the evidence collected, including Mr Jooste's statements under oath, as well as the factors set out in section 167(2)(a) and (b) of the Financial Sector Act and section 82 of the Financial Markets Act and reached a preliminary view on the merits of the alleged contraventions and proposed penalties.

COMPLIANCE WITH THE PROMOTION OF ADMINISTRATIVE JUSTICE ACT (PAJA)

20. The FSCA is obligated by section 91 of the Financial Sector Act to apply the provisions of the Promotion of Administrative Justice Act, Act 3 of 2000 (PAJA) to any administrative action it takes[5].

21. In compliance with the procedural requirements of PAJA, the investigation report, including the supporting evidence, was furnished to Mr Jooste, as well as the grounds and reasons for the FSCA's intended actions to impose administrative penalties.

22. Mr Jooste was invited to make written submissions in response to the FSCA's preliminary view on the findings of the investigation and the proposed penalties. In response, he furnished the FSCA with written submissions, which were considered prior to issuing the penalty order on 29 October 2020.

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[5] *"**Applicability of Promotion of Administrative Justice Act to administrative action by financial sector regulators***
The Promotion of Administrative Justice Act applies to any administrative action taken by a financial sector regulator in terms of this Act or a specific financial sector law."

23. Mr Jooste was invited to make written submissions to the FSCA on the Tribunal's decision of 13 December 2021 which submissions were considered by the FSCA for its preliminary view on the new proposed administrative penalties as per the FSCA's letter of 10 August 2022.

24. In its letter dated 10 August 2022, the FSCA invited Mr Jooste to make written submissions on the new proposed administrative penalties. In response, and on 12 September 2022, he furnished the FSCA with further written submissions.

A SYNOPSIS OF MR JOOSTE'S SUBMISSIONS POST THE TRIBUNAL'S 13 DECEMBER 2021 DECISION

25. Mr Jooste raises four issues regarding the FSCA's approach in determining the new administrative penalty as set out in the FSCA's letter of 10 August 2022.

26. The *first* represents a denial that the Tribunal found that:

"… he thus knew that Deloitte would seek to investigate and there was little if any prospect of the financial statements being published on time."

27. Having regard to the Tribunal's decision, the Tribunal, paragraph 68 quoted the following from the FSCA's 29 October 2020 order:

"However, the fact that on the morning of 30 November 2017 Mr Jooste understood that Deloitte was going to endeavour to conclude its audit on time does not alter the fact that Mr Jooste knew that the audit information had not been provided, and could not be provided, because it did not exist. He thus knew that Deloitte would seek to investigate, and that there was little if any prospect of the financial statements being published on time.

Mr Jooste was pivotal to providing the audit evidence. Without him providing the required audit evidence, the auditors would not have been able to finalise the audit. He knew that.

Without this audit evidence, the suspicions of material fraud and accounting irregularities that permeated various previous financial reporting periods could not be dispelled. In the circumstances, the Authority is satisfied that by the morning of 30 November 2017, Mr Jooste knew that he had not and would not be able to produce the required audit evidence. In these circumstances, he reasonably expected that Steinhoff would likely be unable to avoid a forensic Investigation and would be unlikely to publish audited results expected on or about 5 December 2017."

28. The Tribunal then found that[6]:

"Mr Jooste, although placing the timing in dispute in his evidence and submissions, did not address the finding that he knew that the missing evidence did not exist. This was also not addressed in Mr van Zyl's argument in chief and although argued in detail by Mr Marcus, Mr van Zyl chose not to argue in reply. We therefore conclude that the inference drawn by the FSCA was properly drawn." (own emphasis)

[6] See paragraph 69 of the Tribunal's decision.

29. The Tribunal agreed with the inferences drawn by the FSCA as quoted, which included that Mr Jooste reasonably expected that (i) Steinhoff would likely be unable to avoid a forensic Investigation and (ii) would be unlikely to publish audited results expected on or about 5 December 2017.

30. The *second* issue raised by Mr Jooste is the FSCA's rejection of his argument that, with the use of the date of 4 December 2017, as per the Tribunal's direction, Ocsan avoided no loss relevant to the determination of the administrative penalty. According to Mr Jooste, the losses Ocsan avoided by selling its Steinhoff shares on 4 December 2017 resulted from 'normal' share price fluctuations.

31. The real issue is whether Ocsan avoided a loss by selling its Steinhoff shares on 30 November 2017 rather than 4 December 2017. Whether the Steinhoff share activity on 4 December 2017 was a result of 'normal' share price fluctuations is irrelevant for such calculation.

32. On 30 November 2017, Ocsan sold 770 000 Steinhoff shares at R56,17 per share, amounting to R43 242 374. Had Ocsan sold its 770 000 Steinhoff shares on 4 December 2017 at R50,25 (closing price) per share, it would only have received an amount of R38 692 500. The loss avoided by Ocsan by selling its Steinhoff shares on 30 November 2017, rather than on 4 December 2017, amounts to R4 549 874.

33. Steinhoff published a SENS announcement at 08:25 on 4 December 2017, which read as follows:

"The Supervisory Board of Steinhoff confirms that the 2017 consolidated financial statements will be released albeit in unaudited form on schedule on 6 December 2017. In connection with the audit of the consolidated financial statements of the Company for the financial year ended 30 September 2017, the Supervisory Board and the statutory auditors of the Company have not yet finalised their review of certain matters and circumstances, most of which were raised by the criminal and tax investigation in Germany (as previously reported). No additional information came to light to change the previous views expressed regarding the investigation. The Company expects to publish the audited 2017 consolidated financial statements before 31 January 2018."

34. In summary, the SENS announcement confirmed that:

34.1. The Steinhoff Supervisory Board would release the 2017 consolidated financial statements, albeit in unaudited form, on schedule on 6 December 2017;

34.2. Steinhoff expected to publish the audited 2017 financial statements before 31 January 2018;

34.3. The reason for the delay was the reviewing of some issues and circumstances raised mainly by the criminal and tax investigation in Germany; and

34.4. No additional information came to light to change the previous views expressed regarding such investigation.

35. The FSCA considers the issue of whether the Steinhoff share price drop and the number of shares traded on 4 December 2017 is exceptional, irrelevant to whether Ocsan avoided a loss. For the sake of completeness, the following statistics may be relevant.

36. The highest percentage difference in the closing price of the Steinhoff shares in September 2017 was between 7 and 8 September 2017, when the share closed **2,6% higher** on 8 September 2017. A mere 13 981 523 shares traded. The highest percentage drop in the Steinhoff share price in September 2017 was between 22 and 26 September 2017, when the share price closed **2,2% lower**. Only 8 047 128 shares traded on 26 September 2022. The **average** percentage change in the share price in September 2017 represented **1,1%.**

37. In October 2017, the highest percentage difference in the closing price of the Steinhoff shares was between 5 and 6 October 2017, when the share closed **2% higher** on 6 October 2017. A mere 6 605 850 shares traded. The highest percentage drop in the Steinhoff share price in October 2017 was between 6 and 9 October 2017, when the share price closed **1,6% lower**. 10 318 785 shares traded on 9 October 2022. The **average** percentage change in the share price in October 2017 represented **0,7%.**

38. In November 2017, there were two occasions where the share price closed **lower** up to a percentage of **4,4%,** on 8 and 10 November 2017, respectively. This percentage was substantially higher than the trades in September and October 2017, pushing the **average** percentage change for November 2017 to **1,7%**.

39. The higher percentage of **4.4%** may be explained by a news article that Reuters published on 8 November 2017 and a SENS announcement from Steinhoff in response the same day[7]. The full extent of the article was only fully absorbed by the market on 10 November 2017, after which the shares returned to normal trading.

40. The share closing price movement percentages at the end of November 2017 / the beginning of December 2017 represented:

    40.1. from 5448 cents per share (cps) to 5504 cps between 27 and 28 November 2017, i.e. an increase of **1%**;

    40.2. from 5504 cps to 5650 cps between 28 and 29 November 2017, i.e. an increase of **2.5%**;

[7] The news article informed investors that Steinhoff had failed to inform investors, in line with European financial rules, that the company had acquired a 45 percent stake in a Swiss company, GT Branding Holding and then lent it 810 million Swiss francs. The article alleged that the transaction was material and should have been published. Furthermore, the transaction was not disclosed in the 2015 and 2016 annual reports, in the share prospectuses published in August 2015 and November 2015, and in a debt prospectus published in July 2017.

40.3. from 5650 cps to 5626 cps between 29 and 30 November 2017, i.e. a drop of **0.4%**;

40.4. from 5626 cps to 5581 cps between 30 November 2017 and 1 December 2017, i.e. a drop of **0.8%**, and

40.5. then from 5581 cps to 5025 cps between 1 and 4 December 2017, i.e. a significant drop of **11.1%**.

41. The share trading patterns of the Steinhoff share from September 2017 to the end of November 2017 show that deviances from the previous day's closing prices of more than **2%** to **3%** did not result from "*…'normal' share price fluctuations."*. An **11.1%** fluctuation for the Steinhoff share price was substantially higher than the 'normal' Steinhoff share price fluctuations during the previous months. It resulted in an R23 962 082 921 market cap loss in a single trading day. The number of deals on the JSE on 4 December 2017 was 15 500, almost three times more than the average of the daily trades of the preceding week.

42. The FSCA, therefore, disagrees with the contention that Ocsan avoided no cognisable loss. It avoided a loss of R4 549 874. Mr Jooste has not made out a sensible argument why the loss avoided by Ocsan should be discounted with reference to the determination of an appropriate penalty for Mr Jooste.

43. The *third* issue raised by Mr Jooste is that the FSCA should not use the closing price of the Steinhoff share to calculate the loss avoided by both Ocsan and Dr Burger on 4 and 6 December 2017, respectively. Mr Jooste contends that fairness dictates that the average share price on both dates be used as opposed to the closing price.

44. According to Mr Jooste, the average price of Steinhoff shares was R52.82 on 4 December 2017 and R19.64 on 6 December 2017. Mr Jooste alleges that such average prices are drawn from the table in paragraph 24 of the FSCA's letter of 10 August 2022. However, the amounts of R52.82 and R19.64 do not appear in the FSCA's letter of that date.

45. The average price for a share cannot be calculated by adding the highest price that the share traded at on the day to the lowest price and then dividing the price by two as Mr Jooste has done. A total of 29 205 150 Steinhoff shares traded in 15 500 deals on 4 December 2017, and 314 567 060 Steinhoff shares traded in 85 471 deals on 6 December 2017. It is a more complicated calculation to determine the average price of the total volume of traded shares.

46. The price of intraday trades can be affected by many factors, including news that is released regarding either the particular share or the country or a market (such as emerging markets), as well as the different levels of demand for, and supply of, a share throughout the day and these factors can cause price spikes during intraday trading. The high and low price of a share is thus not a reliable source to

determine the value, or even average value, of a share without considering such high and low price in conjunction with other factors. The closing price remains the most accepted and reliable value for a share daily and is applied universally.

47. Factors that could be considered include, for instance, Steinhoff published the 4 December 2017 SENS announcement at 8:25, a mere 35 minutes before the market opened. The market did not have enough time to fully absorb the news and consider its impact on the price of Steinhoff shares for the earlier trades in the day, and the effect that the news had on the share price is only evident from the trades later in the day when the market had sufficient time to absorb the news.

48. To match a deal during volatile share price movement, you will always have to be the cheapest offer due to price priority to match a deal. It is impossible to speculate at what time and price a sale of the shares would have occurred. As is evident, a further 33 383 850 Steinhoff shares traded on 5 December 2022 as the market continued to absorb the news in the SENS announcement of 4 December 2022. On 5 December 2017, the Steinhoff share closed at R45.65.

49. The closing price is the price the market uses to value derivatives such as futures, contracts for difference (CFDs), and options for calculating variation margins. Thus, the closing price remains the correct price to calculate the loss avoided or profit gained.

50. In the absence of a proven and acceptable formula being used by Mr Jooste to determine the average value of the share on 4 and 5 December 2017, the FSCA does not accept Mr Jooste's calculations or his contentions that the FSCA used the closing price to his prejudice.

51. The *fourth* issue raised by Mr Jooste is that the FSCA determined the maximum permissible penalty of R24,352,316 by having regard to the provisions of section 82(2)(a) and (b) of the Financial Markets Act. According to Mr Jooste, such an approach is inconsistent with the historical approach of the FSCA (and its predecessors) in determining an appropriate administrative penalty. Mr Jooste references five matters and contends that these matters suggest a determination (or agreement) with reference to profit made or loss avoided and not, additionally, the imposition of the statutory penalty.

52. Three of the matters, being *Zietsman v Directorate of Market Abuse 2016 (1) SA 218 (GP), The Directorate of Market Abuse v Brown & 2 Others (case no. 12/2008)* and *The Directorate of Market Abuse v De Jager (case no.1/2009)* are matters where the Directorate of Market Abuse of the Financial Services Board (the FSB) investigated insider trading contraventions in terms of section 73 of the Securities Services Act, Act 36 of 2004 (the Securities Services Act)[8].

[8] The Securities Services Act was repealed with effect from 3 June 2013 in terms of section 112 of the Financial Markets Act.

53. Section 77 of the Securities Services Act prescribed an insider's civil liability resulting from insider trading. In terms of section 77(4) of the Securities Services Act:

"(4) An insider who knows that he or she has inside information and who encourages or causes any other person to deal in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it is, subject to subsection (5), liable, at the suit of the board in any court of competent jurisdiction, to pay to the board-

(a) if the other person dealt in such securities, the equivalent of the profit which the person made or would have made if the securities had been sold at any stage, or the equivalent of the loss avoided, as a result of such dealing;

(b) a penalty, for compensatory and punitive purposes, in a sum determined in the discretion of the court but not exceeding three times the amount referred to in paragraph (a);

(c) interest;

(d) the commission or consideration received for such encouragement; and

(e) cost of suit on such scale as may be determined by the court."

54. The ‘statutory penalty’ under the Securities Services Act for a contravention similar to section 78(5) of the Financial Markets Act was calculated with reference to the profit made or loss avoided. The maximum penalty that could be given amounted to the profit made or loss avoided plus three times, interest and costs. The Securities Services Act did not provide for any additional amount save for any commission or consideration received for encouraging a person to trade as per section 77(4)(d) of the Securities Services Act.

55. The matters of *The Directorate of Market Abuse & Another v Moodley* and *The Directorate of Market Abuse & Another v Johnson,* related to insider trading contraventions under the Financial Markets Act where section 82 applied in respect of the calculation of an appropriate administrative penalty. Mr Moodley and Mr Johnson were both directors within the Basil Read Group. Both traded in Basil Read Holdings Limited shares whilst in possession of inside information. Mr Johnson also disclosed to his sister that the company’s results were going to be negative, resulting in her trading in the share.

56. Mr Moodley was found to have contravened section 78(1)(a) of the Financial Markets Act, and Mr Johnson was found to have contravened sections 78(1)(a), 78(4)(a), and 78(4)(b) of the Financial Markets Act. However, both Mr Johnson and Mr Moodley had admitted their contraventions. Mr Johnson and Mr Moodley entered into settlement negotiations with the FSB. They made representations on mitigating circumstances to the FSB, appealing for a lower penalty.

57. The FSB agreed to a settlement with Mr Moodley in the amount of R467 388 being the loss he avoided (section 82(1)(a) of the Financial Markets Act) plus twice the loss he avoided (section 82(1)(a) of the Financial Markets Act).

58. Mr Johnson received an administrative penalty of R938 478, which consisted of the loss he avoided (section 82(1)(a) of the Financial Markets Act) plus three times the loss he avoided (section 82(1)(a) of the Financial Markets Act). Mr Johnson also received a penalty of three times the loss Ms Majam avoided and a discretionary amount of R500 000.00 (section 82(2)(b) of the Financial Markets Act). After negotiations, the FSB agreed to reduce the penalty of R938 478 to R850 000.

59. Thus, in the five matters Mr Jooste referenced, the appropriate administrative penalty calculation was in line with the statutory provisions that applied at the time. It is factually incorrect that the penalties in these matters were calculated only on the profit made or loss avoided. As is evident from the penalty for Mr Johnson, the FSB not only considered but imposed a penalty for a discretionary amount.

60. However, the matter of Mr Johnson can be distinguished from the matter against Mr Jooste in that Mr Johnson admitted his contravention, showed remorse and submitted mitigating circumstances to the FSB to reduce the intended penalty.

CALCULATING AN APPROPRIATE ADMINISTRATIVE PENALTY

61. In its decision of 13 December 2021, the Tribunal found that Mr Jooste contravened section 78(5) of the Financial Markets Act in three instances (i.e., Ocsan, Mr du Toit and Dr Burger) but not in the case of Mr Swiegelaar. The Tribunal ordered that the determination of an appropriate penalty for the contravention of section 78(5) of the Financial Markets Act, as set out in the judgment, is referred to the FSCA for consideration.

62. In terms of section 82(2) of the Financial Markets Act, and subject to subsection 82(3), any person who contravenes section 78(5) of the Financial Markets Act is liable to pay an administrative sanction not exceeding –

(a) the equivalent of the profit that such other person made or would have made if he or she had sold the securities at any stage, or the loss avoided, through such dealing, if the recipient of the information, or such other person, as the case may be, dealt directly or indirectly in the securities listed on a regulated market to which the inside information relates or which are likely to be affected by it;

(b) an amount of up to R1 million, to be adjusted by the Authority (the FSCA) annually to reflect the Consumer Price Index, as published by Statistics South Africa, plus three times the amount referred to in paragraph (a);

(c) interest;

(d) cost of suit, including investigation costs, on such scale as determined by the Authority; and

(e) the commission or consideration received for such disclosure, encouragement or discouragement.

63. Although the FSCA will not use the maximum statutory penalty as a benchmark, it is necessary to determine the maximum to know the range of permissible penalties it may lawfully impose.

64. To this end, to calculate the loss avoided under section 82(2) of the Financial Markets Act, the FSCA must determine when each recipient of the warning SMS would probably have sold their shares, but for their receipt of the warning SMS.

The Ocsan share trades

65. The FSCA accepts the Tribunal's finding that, in this hypothetical counterfactual, the SENS announcement of 4 December 2017 may have triggered Mr Oosthuizen to sell the Ocsan shares. This was because Mr Oosthuizen was a nervous investor who had been particularly concerned about disposing of the Steinhoff shares

(Tribunal decision, para 104). The FSCA, therefore, calculates the loss avoided in respect of the sale of the Ocsan shares using 4 December 2017 as the "trigger date".

The Dr Burger share trades

66. The considerations for Mr Oosthuizen's trades do not apply to Dr Burger. Dr Burger admitted to having sold the shares of two trusts (the Lanne Burger and Dieter Burger Trusts) on the strength of Mr Jooste's advice in the warning SMS (which he then deleted on Mr Jooste's instruction). He did so in two tranches, on 30 November and 1 December 2017, respectively, for approximately R840 000 in respect of each trust. He decided only to sell the Steinhoff shares purchased by the Trust accounts of his children (of which Mr Jooste was a trustee) and not the Steinhoff shares he and his wife held in their names.

67. The Tribunal did not believe that it was necessary to consider Dr Burger's liability as he did not apply for reconsideration of the penalty imposed on him. The Tribunal also did not deal with the loss Dr Burger avoided to determine a penalty for Mr Jooste under section 82(2) of the Financial Markets Act.

68. Dr Burger accepted the administrative penalty imposed on him, which was calculated on the closing price of the Steinhoff share on 8 December 2017 and paid the penalty in full, save for the costs he applied to be remitted.

69. Even though Dr Burger did not dispute the date of 8 December 2017 for purposes of the calculation of his penalty and having regard to the objective facts, in the absence of the warning SMS, the FSCA considers that the earliest date on which Dr Burger would have considered selling the Steinhoff shares was 6 December 2017.

70. The FSCA is supported in this view by the following facts:

70.1. There is no evidence to suggest that Dr Burger was a nervous investor like Mr Oosthuizen or that Dr Burger would have sold all the Steinhoff shares of the two trusts on publication of the first SENS announcement.

70.2. On the contrary, Dr Burger appeared to be the opposite type of investor. As established during his interviews with the FSCA, Dr Burger did not keep a close eye on his investments on a day-to-day basis:

70.2.1. he was not an experienced investor and purchased shares with a long-term investing plan. He did not generally follow SENS announcements in respect of the shares he invested in (indeed, he did not seem to know what SENS announcements were or where to find them); and

70.2.2. He would read newspaper articles relating to the companies in which he purchased shares and a monthly newsletter sent by PSG regarding companies and investments.

70.3. Dr Burger testified that he was not qualified or knowledgeable on share trading but knew that he believed that Mr Jooste was the most important man in the Steinhoff business. He believed Mr Jooste, or anything that might happen to Mr Jooste, would influence the Steinhoff share price at any time.

71. The FSCA considers that there is nothing in the SENS announcement published by Steinhoff on 4 December 2017 at 8:25 that would have alerted or caused Dr Burger to sell the Trusts' shares.

72. Steinhoff published another SENS announcement on 6 December 2017 at 7:05. This SENS announcement advised that:

72.1. new information had come to light regarding accounting irregularities which required further investigation. The Supervisory Board, in consultation with the statutory auditors of the Company, approached PricewaterhouseCoopers (PWC) to perform an independent investigation in this regard;

72.2. Mr Jooste, Chief Executive Officer (CEO) of Steinhoff, had resigned, and the Board accepted it with immediate effect;

72.3. the Company would publish the audited 2017 consolidated financial statements once it was in a position to do so. In addition, the Company would determine whether any prior years' financial statements needed to be restated; and

72.4. the Supervisory Board appointed its chairman, Dr Wiese, as executive chairman on an interim basis.

73. As the SENS announcement of 6 December 2017 expressly referred to the resignation of Mr Jooste and an investigation into accounting irregularities, it was more probable that Dr Burger would have sold the Steinhoff shares of the Trusts on 6 December 2017 rather than 4 December 2017.

74. Using 6 December 2017 as the trigger date in relation to Dr Burger is, if anything, conservative (and to Mr Jooste's advantage), given that Dr Burger held on to some shares and *purchased even more shares* on that date. As he explained in his second interview with the FSCA:

74.1. He and his wife had purchased about 15 000 Steinhoff shares in their names years ago. By the time of Dr Burger's second interview with the FSCA, he had *still not sold those shares*, and they had lost most of their value; and

74.2. He had, in fact, also instructed PSG to *purchase* 10 000 Steinhoff shares on behalf of the Pierre Burger Trust account (a trust account in the name of a third child) on 6 December 2017, when the share price plummeted to around 1800cps. He wanted to take the chance to see if he could make a return on his investment if the share price improved again.

75. It is possible that Dr Burger would not have sold the Steinhoff shares at any stage during December 2017 had he not received the warning SMS from Mr Jooste. He may have decided to hold on to the shares, hoping the share price would improve.

76. The FSCA is satisfied that, in the circumstances, and given the objective facts regarding the trading activity and drop in the share price on 6 December 2017, it is reasonable and fair to calculate a penalty for Mr Jooste regarding Dr Burger's trades based on the closing share price of 6 December 2017, after the market reacted to the second SENS announcement.

Relevant factors in determining an appropriate penalty

77. The requirements of section 167(2) of the Financial Sector Act, read with section 82 of the Financial Markets Act, in determining an appropriate proposed administrative penalty have been considered in line with the Tribunal's guidance.

78. In terms of section 167(2)(a), the matters to which the FSCA must have regard to include the following:

78.1. the need to deter the conduct (section 167(2)(a)(i));

78.2. the degree to which Mr Jooste cooperated with the FSCA in relation to the contravention (section 167(2)(a)(ii));

78.3. any submissions by, or on behalf of, Mr Jooste relevant to the matter, including mitigating factors referred to in those submissions (section 167(2)(a)(iii)).

79. In terms of section 167(2)(b), the matters that the FSCA may have regard to include the following:

79.1. the nature, duration, seriousness and extent of the contravention (section 167(2)(b)(i));

79.2. any loss or damage suffered by any person as a result of the conduct (section 167(2)(b)(ii));

79.3. the extent of any financial or commercial benefit to the person; or a juristic person related to the person, arising from the conduct (section 167(2)(b)(iii));

79.4. whether the person has previously contravened a financial sector law (section 167(2)(b)(iv));

79.5. the effect of the conduct on the financial system and financial stability (section 167(2)(b)(v));

79.6. the effect of the proposed penalty on financial stability (section 167(2)(b)(vi));

79.7. the extent to which the conduct was deliberate or reckless (section 167(2)(b)(vii)).

80. All the factors mentioned in section 167(2) have been taken into consideration, and each factor will, in what follows, be dealt with in more detail.

Mr Jooste's Submissions

81. The FSCA received submissions from Mr Jooste on 28 January 2022 and 12 September 2022 regarding the imposition of a newly calculated appropriate administrative penalty.

82. In his submissions, Mr Jooste conflates the effect of the contravention of section 78(5) with the collapse of the Steinhoff share and the losses he allegedly sustained therefrom. Mr Jooste accuses the FSCA of penalising him as being personally and individually responsible for all the troubles at Steinhoff and that such sentiment is allegedly supported by the FSCA's approach in determining a sanction and the alleged comments made by Mr Brandon Topham (Mr Topham) a former employee of the FSCA alluded to in paragraph 108 of the Tribunal's decision.

83. The FSCA rejects the suggestions of bias or victimization of Mr Jooste in view of the "troubles" encountered by Steinhoff. The FSCA records that the collapse of the Steinhoff share and the cause thereof is the subject of a separate FSCA investigation which has, already resulted in a substantial penalty having been imposed on the Steinhoff company and which is ongoing in respect of other persons. Mr Topham's remarks, however they may have been perceived, played no role in the determination of either the previous or current penalty amounts.

84. Mr Jooste believes that a contravention of section 78(5) of the Financial Markets Act is less reprehensible than a contravention of section 78(4)(a). However, this

does not appear from the legislation where the legislator provided for an equal prescribed maximum penalty for both contraventions. An offence under section 78(5) where a CEO of a global multibillion-euro company, listed on two exchanges, encourages his friends to sell their shares by referencing '*bad news'* and '*problems'* is severe. Mr Jooste's message may not have contained inside information but contained information beyond merely an instruction or encouragement to sell. News of Mr Jooste's message may have had a similar or even worse effect than the disclosure of inside information.

85. Mr Jooste submitted that the FSCA must suggest that insider trading is rife to award a deterrent penalty. According to Mr Jooste, in the absence of insider trading being rife, the need for deterrence is not a pressing one. The FSCA disagrees with Mr Jooste. The need for general deterrence is not aimed at preventing those who have already committed or are in the process of committing the contravention from continuing to do so. It is to deter those who are able or capable of contravention. In the context of the market abuse provisions under the Financial Markets Act, insider trading remains the contravention mostly referred to the FSCA for investigation.

86. Mr Jooste also submitted that the FSCA should have considered the so-called 'personal deterrence' need. Mr Jooste submitted that he is unlikely to find himself in a position to trade on inside information, even should he be inclined to do so. The FSCA does not consider this submission to be correct in any respect. First,

the deterrence factor contemplated by section 167 of the Financial Sector Act is of general application. It feeds into the FSCA's mandate and objective of regulating and ensuring fair and transparent financial markets. The FSCA does not regulate individuals. Hence, the "personalised" aspect of the deterrence factor should not be overstated or elevated to an absolute principle. Deterrence must be considered holistically in the context of each case. In any event, Mr Jooste may still find himself in a position to contravene section 78 of the Financial Markets Act for as long as he, or any legal entities associated with him, possesses listed securities or come into possession of or have in his possession inside information.

87. The FSCA cannot properly consider Mr Jooste's personal circumstances in so far as Mr Jooste failed to make sufficient submissions concerning his personal circumstances. Mr Jooste merely mentioned that he is 61 years old, married with three children. It is well known that Mr Jooste's children are adults. If Mr Jooste's wife and children depend on him financially or in any other respect that required the FSCA's consideration, he should have dealt with it in his submissions.

88. Even though it is evident from Mr Jooste's ITA34 Income Tax return dated 24 July 2018 (which was attached to Mr Jooste's submissions) that Mr Jooste's declared substantial income, Mr Jooste failed to disclose his current financial position and interests both locally and internationally. As the CEO of Steinhoff for 19 years with a yearly income of over R200 million, Mr Jooste is likely to be a person of substantial means.

89. Mr Jooste was invited to make further submissions regarding his personal circumstances, particularly his financial circumstances. In Mr Jooste's submissions of 12 September 2022, he alleges that he transferred R117 026 420 of Steinhoff shares he received as part of his remuneration to Mayfair Speculators (Pty) Ltd on loan account. Mr Jooste alleges that he did so as Mayfair Speculators (Pty) Ltd provided security in respect of debt owing to financial institutions. Mr Jooste does not disclose the nature of his relationship with Mayfair Speculators (Pty) Ltd or the income and/or benefits he derived from transferring R117 026 420 in value of Steinhoff shares to Mayfair Speculators (Pty) Ltd on a loan account. As Mayfair Speculators (Pty) Ltd settled its creditors in terms of a Scheme of Arrangement and Compromise in terms of section 155 of the Companies Act, 2008 ("the Scheme") and as Mayfair Speculators (Pty) Ltd is still in business, Mr Jooste should still have a loan account. Mr Jooste did not make any submissions on the Scheme or the effect thereof on the alleged loan account.

90. On considering Mr Jooste's ITA34 Income Tax return, it is evident that during the year of assessment (i.e. 2017), Mr Jooste sold an immovable property for a substantial amount. Mr Jooste is or was also a 33.33% partner in MJD Aviation Partnership that reported a turnover of millions for the 2017 assessment year. Mr Jooste made no submissions on these subjects. Mr Jooste's personal circumstances thus largely remain unknown or unexplained.

91. The FSCA does not intend to impose a penalty in respect of Mr Swiegelaar's trades, and for the reasons dealt with herein, used the share closing price of 4 December 2017 to determine the loss avoided in respect of Ocsan.

92. The FSCA does not accept Mr Jooste's contention that Ocsan avoided no loss on the basis that the change of the share price between 30 November 2017 and 4 December 2017 was because of 'normal' share fluctuations. If Mr Oosthuizen had traded on 4 December 2017, he still would have avoided a loss. But he did not trade on 4 December 2017 because Mr Jooste encouraged him to trade on 30 November 2017.

The Nature of the Offence

93. Insider trading was described in the following terms by the High Court in *Zietsman*:[9]

> *"Owing to its non-public and precise nature and its ability to influence the prices of financial instruments significantly, inside information grants the insider in possession of such information an advantage in relation to all the other actors on the market who are unaware of it. It enables that insider, when he acts in accordance with that information in entering into a transaction on the market, to expect to derive an economic advantage from it without exposing himself to the same risks as the other investors on the market. The essential characteristic of insider dealing thus consists in an unfair advantage being obtained from information to the detriment of third parties*

[9] Zietsman and Another v Directorate of Market Abuse and Another 2016 (1) SA 218 (GP) para 83.

who are unaware of it and, consequently, the undermining of the integrity of financial markets and investor confidence. See: Spector Photo Group NV, Chris Van Raemdonk v Commissie Voor Het Bank-Financie- En Assurantiewezen (CBFA) [2009] EUECJ C-45/08 *(23 December 2009) at para 50-52."*

94. Insider trading is therefore considered a serious offence. So too is the related offence of "tipping", in which an insider uses his inside information to encourage another person to trade. Such conduct results in market distortion and an unfair economic advantage for the insider and/or the tippee. An insider – or the tippee acting on the insider's encouragement – can earn inflated profits or avoid losses compared to investors trading without the benefit of the inside information or the encouragement.

95. Insider trading undermines the integrity of financial markets and investor confidence at the same time. Investors are entitled to expect the market to be fair and to reward innovation and talent, but insider trading undermines that expectation because insiders have informational advantages with which others cannot compete.

96. The level of insider trading cases proceeding to enforcement in South Africa is low compared to other countries such as the United States of America. The Securities and Exchange Commission (SEC) prosecutes over 100 individuals for insider trading each year. Senior executives and directors, such as Mr Jooste, account for 92% of such cases.

97. In Australia, from 2004 to the end of 2015, 37 individuals were convicted and sentenced. 11 were jailed and the other 26 were sentenced with intensive correction orders, community service orders, good behaviour bonds or fines.

Deterrence

98. In terms of section 167(2)(a) of the Financial Sector Act, the need to deter conduct is a factor the FSCA is compelled to consider. However, the FSCA is cognisant that it is not a factor that should be the decisive factor or should be considered in isolation.

99. The FSCA is required to impose an administrative penalty which, *inter alia*, deters such conduct and which is commensurate with the gravity or seriousness of the contravention.

100. The FSCA is cognisant that deterrence is but one factor to be weighed in the balance and that any penalty would only be appropriate if, as explained by the Tribunal in *MET Collective Investments (RF) (Pty) Ltd v FSCA and another* Case No. A23/2019, such a penalty is balanced, proportionate and fair.

Mr Jooste's Cooperation

101. Mr Jooste attended the FSCA interviews, under notice and on dates arranged with his legal representatives and provided answers to questions. To that extent, he was a compliant witness.

102. However, in his interviews, Mr Jooste provided little information directly relevant to the contraventions of section 78(5). He has never accepted responsibility for the contravention despite the overwhelming evidence against him.

103. The FSCA considers the extent of Mr Jooste's cooperation to be a mildly mitigating factor.

The Nature, Duration, Seriousness and Extent of Mr Jooste's Contravention

104. The contravention involved insider trading by the CEO of one of the world's largest groups of home decoration stores, with its shares listed in South Africa and Germany.

105. Mr Jooste was an executive and the CEO with about 20 years of experience and knowledge of local and foreign listed companies. In a closed period, he intentionally sent a warning SMS to a few of his select friends and associates,

encouraging them to sell their shares, then to delete the message, and not to tell anyone about it.

106. Mr Jooste enabled his select friends and associates to avoid substantial losses from "*bad news*" yet to be published, whilst millions of investors, including pensioners, would lose billions in rands, euros and US dollars, as they did not receive the same warning SMS.

107. On a circumspection of all relevant information, Mr Jooste's contraventions remain serious and are aggravated by his lack of accountability and remorse. At the same time, the FSCA accepts that the duration of the contraventions was short and that the warning SMS was only sent (intentionally) to three individuals – Mr Du Toit, Mr Oosthuizen and Dr Burger. The FSCA has considered this for the penalty it intends to impose.

Any loss or damage suffered by any person as a result of Mr Jooste's conduct

108. Persons that bought the shares sold by Mr Oosthuizen and Dr Burger on 30 November 2017 suffered losses, as the share price dropped substantially after 30 November 2017. The share price fell from 5626cps on 30 November 2017 to 462cps on 27 December 2017.

109. Put simply, what Mr Oosthuizen and Dr Burger gained by selling on 30 November 2017, the purchasers of their shares lost.

The Extent of Any Financial or Commercial Benefit to Mr Jooste

110. Mr Jooste was invited to make submissions on this issue. He contended that he received no financial benefit. The FSCA has no evidence that Mr Jooste derived any financial or commercial benefit from his conduct.

111. Whether or not Mr Jooste incurred losses due to him retaining a large stake in Steinhoff "directly or indirectly" is irrelevant for purposes of the consideration of this factor. There is no suggestion that Steinhoff collapsed because of Mr Jooste's warning SMS. The collapse of the Steinhoff share and the cause thereof is the subject of a separate FSCA investigation.

112. For present purposes, the FSCA considered that Mr Jooste did not derive financial benefit from his conduct as a mitigating factor when deciding on an administrative penalty.

Whether Mr Jooste has Previously Contravened a Financial Sector Law

113. The FSCA has no evidence that Mr Jooste previously contravened a financial sector law.

114. For present purposes, the FSCA considered this a mitigating factor for imposing an administrative penalty.

The Effect of Mr Jooste's Conduct on the Financial System and Financial Stability

115. The sale by Mr Oosthuizen and Dr Burger of their respective Steinhoff shares did not cause major disruption to the financial system and financial stability.

116. However, Mr Jooste's intentionally sending the warning SMS and encouraging the recipients to sell their Steinhoff shares may diminish investor confidence and deter local investment in South Africa. Insider trading, by its nature, undermines public confidence in financial markets and leads the general public to believe that the system is rigged and unfair.

The Effect of the Proposed Penalty on Financial Stability

117. The proposed penalty will not harm the financial stability of the markets.

118. Instead, it would serve to restore and improve local and foreign investor confidence and reassure the general public that financial markets in South Africa operate in a manner that is fair and efficient and that when the rules are broken, appropriate consequences follow.

119. A penalty that is too lenient would have the opposite effect and result in investors concluding that South African markets are inadequately regulated and, therefore, vulnerable to abuse and manipulation.

The Extent to which the Conduct was Deliberate or Reckless

120. The conduct was self-evidently deliberate. Mr Jooste understood the unlawfulness of what he was doing, as is evident from his instruction, in the warning SMS, to the recipients to delete the message and never speak of it.

121. At the time of the contravention, Mr Jooste had about 20 years of experience as an executive of a listed entity. As an experienced executive, he knew the consequences of his conduct and acted deliberately in breach of the law.

Calculation of Mr Jooste's penalty

122. The FSCA previously communicated to Mr Jooste that it intended to impose an administrative penalty of **R20 000 000** for contravening section 78(5) of the Financial Markets Act.

123. Mr Jooste committed three separate contraventions of section 78(5) by sending the warning SMS to Mr du Toit, Mr Oosthuizen and Dr Burger, encouraging each

recipient to sell their Steinhoff shares. Mr du Toit decided not to trade upon receiving the SMS.

124. In terms of section 82(2) of the Financial Markets Act, the FSCA may impose a penalty not exceeding the following:

124.1. an amount of **R5 701 845** being the equivalent of the losses avoided by Mr Oosthuizen and Dr Burger through their dealings (section 82(2)(a));

124.2. an amount of **R17 105 535** being three times the losses avoided by Mr Oosthuizen and Dr Burger (section 82(2)(b)); and

124.3. an amount of **R1 544 936** (being R1 million in respect of Mr Du Toit, Mr Oosthuizen and Dr Burger, adjusted by the FSCA annually to reflect the Consumer Price Index) (section 82(2)(b) of the Financial Markets Act).

125. The maximum penalty amount the FSCA may impose is **R24 352 316**. This merely represents the maximum penalty – the outer limit of the range of penalties that the FSCA may impose. In this regard, the FSCA is cognisant of the Tribunal's caution that the prescribed maximum penalty does not set a benchmark.

126. The FSCA carefully considered the factors listed above and Mr Jooste's submissions. It weighed in the mitigating factors, including that Mr Jooste has not

personally benefitted, that he has not previously contravened a financial sector law, that the warning SMS was deliberately sent to only three individuals, and that he was to some extent a compliant witness.

127. As an aggravating factor, the FSCA considered that Mr Jooste persists in his refusal to account for his conduct or to show remorse.

128. Under circumstances where Mr Jooste failed to convince the FSCA through his further submissions of 12 September 2022 that the proposed penalty is inappropriate, the FSCA is satisfied that the imposition of an administrative penalty on Mr Jooste of **R20 000 000** is just, reasonable and appropriate and, by virtue of this order, imposes such penalty on him.

129. In addition to the penalty, the FSCA, in terms of sections 82(2)(c) and (d) of the Financial Markets Act, impose on Mr Jooste the liability of interest on the penalty.

130. In terms of section 82(4) of the Financial Markets Act, any amount recovered from Mr Jooste will be deposited directly into the specially designated trust account administered by the FSCA.

131. The FSCA will distribute the balance to the claimants referred to in section 82(5) of the Financial Markets Act and under section 82(6) of the Financial Markets Act.

132. The penalties are payable to the FSCA within 30 days from the date of this Order.

MR JOOSTE SHOULD FURTHER TAKE NOTE THAT:

133. If he fails to pay the administrative penalty within the period prescribed by this Order, in terms of section 169 of the Financial Sector Act, interest, at the rate prescribed in terms of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), will be payable in respect of any unpaid portion of administrative penalty until it is fully paid.

134. Failure to comply with this Order and notice will result in the provisions of section 170 of the Financial Sector Act being invoked, which provide as follows:

"(1) The responsible authority that makes an administrative penalty order may file with the registrar of a competent court a certified copy of the Order if-

(a) the amount payable in terms of the Order has not been paid as required by the Order; and

(b) either-

(i) no application for reconsideration of the Order in terms of a financial sector law, or for judicial review in terms of the Promotion of Administrative Justice Act of the Tribunal's decision, has been lodged by the end of the period for making such applications; or

(ii) if such an application has been made, proceedings on the application have been finally disposed of.

(2) The Order, on being filed, has the effect of a civil judgment, and may be enforced as if lawfully given in that court."

135. In terms of section 230 of the Financial Sector Act, a person aggrieved by this decision has a right to apply for the reconsideration of the decision by the Tribunal. An application for reconsideration must be made –

(a) in accordance with the Tribunal rules; and

(b) within the time periods set out in section 230(2) of the Financial Sector Act.

You may contact the secretary of the Tribunal at (012) 741 4302 or via electronic mail at Applications@fstribunal@fsca.co.za.

Signed at Pretoria on the **6th** day of **December 2022.**



UNATHI KAMLANA
COMMISSIONER
FINANCIAL SECTOR CONDUCT AUTHORITY