

FINANCIAL SECTOR CONDUCT AUTHORITY
(‘FSCA’)

and

VICEROY RESEARCH PARTNERSHIP
AIDEN LAU
FRASER JOHN PERRING
GABRIEL BERNARDE

(hereinafter referred to as ‘the Respondents’)

ADMINISTRATIVE PENALTY ORDER IN TERMS OF SECTION 167 OF THE
FINANCIAL SECTOR REGULATION ACT 9 OF 2017

1. The FSCA imposes an administrative penalty of fifty million Rand (R50 million) on the Respondents in terms of section 167(1)(a) of the Financial Sector Regulation Act 9 of 2017 (FSR Act) for having contravened Section 81(1) of the Financial Markets Act 19 of 2012 (FMA) in that during or about 30 January 2018 the Respondents published the following false, misleading or deceptive statements, promises or forecasts regarding material facts in respect of Capitec Bank Holdings Limited (Capitec) which they ought reasonably to have known were false, misleading or deceptive:

- Capitec had to write-off more than 42% of the gross collectable principal due to it in FY2017.
- Capitec had a pervasive practice of rescheduling the loans of its delinquent clients through the issuance of new loans to those clients.
- Capitec’s loan book is irreconcilable (R3bn).
- Capitec will lose a court case that will trigger a Class Action lawsuit.
- The Class Action judgment will be that Capitec must pay R12.7bn to its former and current clients.

- Capitec’s board “is largely and unsurprisingly made up of several executives from both PSG and Steinhoff”.
 - Capitec must recognise an additional R11.37bn of impairments to accurately reflect its liabilities.
2. The Respondents also contravened section 81(2) of the FMA in that subsequent to the publications it had been brought to their attention why the statements, promises or forecasts had been false, misleading or deceptive, and the Respondents notwithstanding failed to publish full and frank corrections of the statements, promises or forecasts as required by Section 81(2) of the FMA.
 3. The penalty imposed is jointly and severally payable by the Respondents within 30 days from the date of this order.
 4. Without providing an exhaustive narration of all the factors that the FSCA considered in determining an appropriate administrative penalty for the above contraventions, the FSCA highlights how some of the applicable factors contemplated in section 167(2)(a) and (b) of the FSR Act apply to the facts of this matter. (For purposes of the below summary, the word “statement” should be read to include statements, promises or forecasts.)

4.1. The need to deter such conduct.

A contravention of section 81 of the FMA is a serious contravention that can cause significant harm to investors, listed entities and the broader market. Hence the quantum of the penalty must serve to deter others from committing such misconduct, and to deter the Respondents from repeating the contraventions.

4.2. The degree to which the person has co-operated with a financial sector regulator in relation to the contravention.

The FSCA had to enlist the assistance of a foreign regulator to compel a representative of the Viceroy Research partnership to be questioned under oath.

4.3. Any submissions by, or on behalf of, the Respondents.

The Respondents have elected not to make any submissions.

4.4. The nature, duration, seriousness and extent of the contravention.

- 4.4.1. The Respondents had a financial interest to publish materially negative statements about Capitec that would cause its share price decline, which in itself should have served as a warning to the Respondents to guard against making conclusions and assumptions that could be informed by such bias, and to ensure that what they publish is presented in a factually accurate, unambiguous and frank manner.
- 4.4.2. The Respondents made a concerted effort to publish these statements as widely as possible, whilst knowing that Capitec is a systemically important financial institution in South Africa and knowing that the statements had the potential to trigger a run on the bank and lead to a bank failure. Further, Respondents knew that their statements, if not fully accurate may cause significant harm to investors, shareholders of Capitec and the financial markets.
- 4.4.3. The statements that Respondents made or published were false, misleading and deceptive regarding material facts and they were significantly at odds with what had been published in audited financial statements and other available information regarding Capitec.
- 4.4.4. The Respondents chose to not provide their statements to Capitec for comment/ clarification prior to publication, or to any Regulators.
- 4.4.5. The FSCA regards the publication of false, misleading, or deceptive statements regarding a listed bank as a very serious contravention. In as far as the publications may be ascribed to mistakes, those mistakes should not have been made in the first place and could have been rectified had the Respondents taken a responsible approach prior to publication.
- 4.4.6. The seriousness of the conduct is compounded by the fact that when presented with clear explanations for why their statements had been false, misleading and deceptive the Respondents revealed that they had no interest

in setting the record straight (if the true facts were at odds with their narrative) and they continued with their campaign for approximately another six months.

4.5. Loss or damage suffered by any person as a result of the conduct.

- 4.5.1. The immediate impact that publication of the statements had was that the Capitec share price declined by 23.12% as a result thereof.
- 4.5.2. Between when the statements were first published and the intraday low price of R705 per share, a total of 1 956 695 shares traded at an average price of R836.40. That price was R80.56 lower than the share price immediately prior to publication, representing an approximate R9 345 million decrease in Capitec's market capitalization during that period.
- 4.5.3. Persons holding long positions in Capitec securities when the statements were published would have suffered actual losses if they had sold the securities on the day of publication of the statements. At least some potential investors were likely dissuaded from investing due to what the Respondents alleged in their publications.

4.6. The extent of any financial or commercial benefit to the person, or a juristic person related to the person, arising from the conduct.

- 4.6.1. The Respondents gained financially from the decline in the Capitec share price.
- 4.6.2. The remuneration that the Respondents stood to receive was a direct function of how far the Capitec share price fell.
- 4.6.3. This profit consideration is relevant to the Respondents' conduct when they first made and published the statements, and to their conduct after having been presented with clear explanations for why the statements had been false, misleading or deceptive.
- 4.6.4. Through its investigation the FSCA believes that it has determined what profit the Respondents had made through their conduct. It suffices to note that the FSCA believes that the Respondents should not profit from such conduct,

and that the penalty therefore includes a disgorgement of all the profits that they made.

4.7. Whether the person has previously contravened a financial sector law.

4.7.1. There is no record of the Respondents previously contravening a financial sector law.

4.8. The effect of the conduct on the financial system and financial stability.

4.8.1. Capitec is a systemically important financial institution in South Africa.

4.8.2. The Respondents published false, misleading or deceptive statements of an adverse material nature regarding Capitec that could have resulted in a bank failure.

4.8.3. That conduct, and the Respondents' failure to subsequently publish corrections of those statements thus posed a clear and present threat to the stability of the South African financial system.

5. In terms of section 169 of the FSR 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 from when it is payable until it is fully paid.

6. Failure to comply with this order will result in the provisions of section 170 of the FSR Act being invoked, which reads as follows:

170. Enforcement

(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.*

A handwritten signature in black ink, appearing to read 'Unathi Kamlana', is written over a horizontal line. The signature is stylized and includes a large loop on the left side.

UNATHI KAMLANA

COMMISSIONER

FINANCIAL SECTOR CONDUCT AUTHORITY