

# THE FINANCIAL SECTOR CONDUCT AUTHORITY

Investigation 369a

In the matter between:

**FINANCIAL SECTOR CONDUCT AUTHORITY**

and

**MARKUS JOHANNES JOOSTE**

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

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### 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).<sup>1</sup>
2. The Financial Sector Conduct Authority (the FSCA) conducted an investigation into alleged contraventions of section 81(1)(a) and (b) of the Financial Markets Act, 19 of 2012 (the Financial Markets Act) in respect of false or misleading or deceptive

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<sup>1</sup> “167(1) **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;”*

statements made or published, directly or indirectly, in respect of Steinhoff International Holdings Ltd and Steinhoff International Holdings NV (Steinhoff International) securities, in respect of the past or future performance of such companies in the annual financial statements (AFS) and annual reports (AR) for the 2014 to 2016 financial years and 2017 half year. For the 2014 and 2015 financial years Steinhoff International Holdings Ltd, and the 2016 financial year and 2017 half year, Steinhoff International Holdings NV were issuers of securities listed on the Johannesburg Stock Exchange (JSE) and the Frankfurt Stock Exchange (FSE), licensed exchanges as contemplated by section 9 of the Financial Markets Act.

3. The investigation concluded that Mr Markus Johannes Jooste (Mr Jooste) contravened section 81(1)(a) and/or (b) of the Financial Markets Act during the financial years 2014 to 2016 and 2017 half year.
4. Section 81(1)(a) of the Financial Markets Act prohibits a person from, directly or indirectly, making or publishing any false or misleading or deceptive statement, promise or forecast in respect of any material fact regarding the past or future performance of a company which has listed securities on a regulated market and which the person knows, or ought reasonably to know, at the time and in light of the circumstances in which it is published, is false, misleading or deceptive.
5. Section 81(1)(b) of the Financial Markets Act similarly prohibits such a publication if, for the reason of the omission of a material fact, the statement, promise or forecast is rendered false, misleading or deceptive.

6. On 15 December 2022, the FSCA notified Mr Jooste in a letter of the FSCA's intention to impose an administrative penalty on him and inviting Mr Jooste to make submissions on the findings of the FSCA's investigation and the intended administrative penalties (*audi* letter).
7. Mr Jooste delivered an affidavit on 3 July 2023 setting out his response to the findings of the FSCA's investigation, to which affidavit the FSCA's investigators prepared a reply. For purposes of this Order, the *audi* letter, Mr Jooste's affidavit and the investigators' reply were considered.

## **DECISION ON MERITS**

8. The FSCA finds as follows:

### **2014**

- 8.1. On 9 September 2014, Mr Jooste directly and/ or indirectly, published in the Audited Group Annual Financial Statements 30 June 2014 and the 2014 Integrated Report (the past performance) of Steinhoff International Holdings Ltd the following material facts as indicated in the first and second column of the table below, which Mr Jooste knew or ought reasonably to have known were false, misleading or deceptive as Mr Jooste created or caused transactions to be created which had no economic substance forming part of these published facts. The adjusted facts, after eliminating the false, misleading or deceptive portion identified in the investigation, are as indicated in the first and third column with the value of the misstatement in the fourth column.

	1	2	3	4
		Material fact as published	Adjusted version of the material fact	Value of misstatement
1	Operating profit before tax	R 14 122 000 000	R 10 863 127 860	R 3 258 872 140
	<p>The false operating profit was either disguised as receivables that were not recoverable or as cash equivalents that were similarly not recoverable. The false irrecoverable assets meant that the corresponding equity of Steinhoff International was also overstated.</p> <p>The higher operating profits were earned in the International operations, which were favourably reported on in the 2014 Integrated Report on pages 42, 46-57 and 68.</p>			
2	Cash and cash equivalents	R16 341 000 000	R2 612 924 620	R13 728 075 380
	<p>The false cash and cash equivalents were not recoverable. This meant that the corresponding equity of Steinhoff International was also overstated.</p> <p>The importance of the cash and cash equivalents, as published on loan covenants and in relation to gross debt, was emphasised in the 2014 Integrated Report on pages 50 and 52 .</p>			

8.2. On 9 September 2014, Mr Jooste directly and/ or indirectly, omitted to publish in the Audited Group Annual Financial Statements 30 June 2014 and the 2014 Integrated Report (the past performance) of Steinhoff International Holdings Limited the following material facts that Mr Jooste knew (or ought reasonably to have known) rendered the publications false, misleading or deceptive because of such omission and which a reasonable user of the publications would have expected to have been informed of, because of the requirements of International Financial Reporting Standards (IFRS):

8.2.1. A note in the 2014 IR and group annual financial results explained what the cash and cash equivalents consisted of.

8.3. Therefore, Mr Jooste contravened section 81(1) (a) and (b) of the Financial Markets Act.

## 2015

8.4. On 8 September 2015, Mr Jooste directly and/ or indirectly published in the Consolidated Annual Financial Statements for the year ending 30 June 2015 and the 2015 Integrated Report (the past performance) of Steinhoff International Holdings Ltd the following material facts (indicated in the first and second column) that Mr Jooste knew (or ought reasonably to have known) were false, misleading or deceptive because Mr Jooste had created or caused transactions to be created which had no economic substance forming part of these published facts and distributed such false revenues at Mr Jooste's discretion. The adjusted facts, after eliminating the false, misleading or deceptive portion identified in the investigation are as indicated in the third column, with the value of or comment on the misstatement in the fourth column.

	1	2	3	4
		Material fact as published	Adjusted version of the material fact	Value of misstatement
1	Operating profit before tax	R 16 638 000 000	R 13 393 142 401	R 3 244 857 599
	<p>The false operating profit was disguised as receivables which were, in fact, not recoverable. The false irrecoverable assets meant that the corresponding equity of Steinhoff International was overstated.</p> <p>The inflated operating profits contributed to the improved margins reported for the group, particularly its International operations, which were reported in the 2015 Integrated Report on pages 20, 27,31,33 and 52.</p>			
2	<p>The 2015 Integrated Report p31 disclosed a 17% increase in revenue and an 8.6% margin in the United Kingdom. It comments: "The UK group delivered a creditable performance...". This "creditable performance" for the United Kingdom operations is repeated in the 2015 Financial Report on p51.</p>		<p>The UK Group did not have any margin or profit without the intercompany transfers from SEGS. SEGS transferred the false income ostensibly earned from the TG Group. The margin was overstated by 8.6%. There was no note indicating that internal transfers created the reported margin.</p>	
3	<p>For Conforama, the 2015 IR at p27 reports a margin of 5% (EUR 160 million/ EUR 3 226 million).</p>		<p>Without the EUR 31.1 million contributions, this margin would be reduced to 4%.</p>	

			There was no note indicating that internal transfers created the reported margin.	
4	Cash and cash equivalents	R37 905 000 000	R6 527 353 629	R31 377 646 370
	The false cash and cash equivalents were not recoverable. This meant that the corresponding equity of Steinhoff International was also overstated.  The importance of the overstated cash and cash equivalents, as published on Steinhoff International's gearing and calculation of net debt, was emphasised in the 2015 Integrated Report, page 53.			
5	Goodwill Steinhoff UK	R4 550 000 000	R624 200 000	R3 925 800 000
	Without the internally arranged contributions received within the group from SEGS, Steinhoff UK did not have sufficient cashflow to justify any goodwill balance. The contributions were also not backed by any transactions with external third parties with real economic substance.			
6	P55 of the 2015 Integrated Report states: " <i>The impairment tests did not result in other material impairment charges during the current year. Impairment testing was done on a basis consistent with the prior year.</i> "		The impairment tests under IFRS should have resulted in a full write-off of the Steinhoff UK goodwill	
7	The 2015 AFS states: " <i>Related-party relationships exist between ..., subsidiaries, joint-venture companies and associate companies within the group .... These transactions are concluded at arm's length in the normal course of business...</i> "		Contributions paid by SEGS were inter-company transactions that were not at arm's length	
			The published statement was false or misleading or deceptive	

8.5. On 8 September 2015, Mr Jooste directly and/ or indirectly omitted to publish in the Consolidated Annual Financial Statements 30 June 2015 and the 2015 Integrated Report (the past performance) of Steinhoff International Holdings Ltd the following material facts that Mr Jooste knew (or ought reasonably to have known) rendered the publications false, misleading or deceptive because of such omissions and which a reasonable user of the publications would have expected to have been informed of because of the requirements of IFRS:

8.5.1. A note in the 2015 IR and group annual financial results which explained what the cash and cash equivalents consisted of.

8.5.2. A note in the 2015 IR that the reported results of Steinhoff UK and Conforama included transfers from group companies as required by IFRS.

8.6. Therefore, Mr Jooste contravened section 81(1) (a) and (b) of the Financial Markets Act.

## 2016

8.7. On 6 December 2016, Mr Jooste directly and/or indirectly published the 2016 Annual Report of Steinhoff International Holdings NV incorporating the Consolidated Annual Financial Statements 30 September 2016 (the past performance) and the following material facts (indicated in the first and second column) that Mr Jooste knew (or ought reasonably to have known) were false, misleading or deceptive because Mr Jooste had created or caused transactions to be created which had no economic substance forming part of these published facts and distributed such false revenues at Mr Jooste's discretion. The adjusted facts, after eliminating the false, misleading or deceptive portion identified in the investigation are as indicated in the third column with the value of or comment on the misstatement in the fourth column.

	1	2	3	4
		Material fact as published	Adjusted version of the material fact	Value of misstatement
1	Operating profit before tax	EUR 1 685 000 000	EUR 1 413 695 197	EUR 271 304 803
	The false operating profit was either disguised as receivables that were, in fact, not recoverable or as cash equivalents that were similarly not recoverable. The false irrecoverable assets meant that the corresponding equity of Steinhoff International was overstated.			

	The inflated operating profits contributed to the improved margins reported for the group and in particular its International operations which were reported on in the 2016 Annual Report pages 16-22 .			
2	For Steinhoff UK the 2016 Annual Report (p183) reported graphically. The graph showed an operating profit of EUR 60 million for the first four quarters and EUR 58 million for the last four quarter of the 15-month year.		Without the GBP 40 million transfers, Steinhoff UK's operating profit would have been reduced by EUR 46.5 million in each 12-month period to EUR 13.5 million and EUR 11.5 million. If the false nature of the revenue is not considered, the results were nevertheless still deceptive as they did not separately disclose the extent transfers of group revenue from outside Steinhoff UK as required by IFRS, nor did they disclose the non-arm's length basis of such transfers.	
3	For Conforama, the 2016 Annual Report (p183) reported graphically. The graph showed an operating profit of EUR 179 million for the first four quarters and EUR 186 million for the last four quarters of the 15-month year.		Without the EUR 30 million transfers, Conforama's operating profit would have been reduced by EUR 30 million in each 12-month period to EUR 156 million and EUR 156 million. If the false nature of the revenue is not considered, the results were nevertheless still deceptive as they did not separately disclose the extent transfers of group revenue from outside Conforama as required by IFRS, nor did they disclose the non-arm's length basis of such transfers.	
4	For Steinhoff Africa, the 2016 Annual Report (p183) reported graphically. The graph showed an operating profit of EUR 7 million for the last four quarters of the 15-month year. (This income included the TG Group rebate income paid to Steinhoff At Work on 20 December 2016).		Without the EUR 23 485 426 revenue from the TG Group and paid by Steinhoff Möbel (via Steinhoff Finance's account), the reported operating profit for Steinhoff Africa for the last four quarters of the 15-month year would have been a loss of EUR 16 million. If the false nature of the revenue is not considered, the results were nevertheless still deceptive as they did not separately disclose the extent transfers of group revenue from outside Steinhoff Africa as required by IFRS, nor did they disclose the non-arm's length basis of such transfers.	
5	Cash and cash equivalents	EUR 2 861 000 000	EUR 684 955 341	EUR 2 176 044 659
	The false cash and cash equivalents were not recoverable. This meant that the corresponding equity of Steinhoff international was overstated.  The importance of the overstated cash and cash equivalents, as published on Steinhoff International's calculation of net debt, was emphasised in the 2016 Annual Report on page 22.			
6	Goodwill Steinhoff UK	EUR 273 000 000	EUR 19 800 000	EUR 253 200 000
	Without the internally arranged contributions received within the group from SEGS, Steinhoff UK did not have sufficient cashflow to justify any goodwill balance.  The contributions were also not backed by any transactions with external third parties with real economic substance.			
7	The 2016 AFS stated that: <i>"Related-party relationships exist between ..., subsidiaries, joint-venture companies and associate companies within the group .... These transactions</i>		Contributions paid by SEGS were inter-company transactions that were not at arm's length	The published statement was false or misleading or deceptive



	<i>are concluded at arm's length in the normal course of business..."</i>		
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8.8. On 6 December 2016, Mr Jooste directly and/ or indirectly omitted to publish in the Consolidated Annual Financial Statements 30 June 2016 and the 2016 Annual Report (the past performance) of Steinhoff International Holdings NV the following material facts that Mr Jooste knew (or ought reasonably to have known) rendered the publications false, misleading or deceptive because of such omissions and which a reasonable user of the publications would have expected to have been informed of because of the requirements of IFRS:

8.8.1. A note in the 2016 consolidated annual financial results which explained what the cash and cash equivalents consisted of.

8.8.2. A note in the 2016 Annual Report that the reported results of Steinhoff UK, Conforama and Africa included transfers from group companies as required by IFRS.

8.9. Therefore, Mr Jooste contravened section 81(1) (a) and (b) of the Financial Markets Act.

### **Half-year 2017**

8.10. On 7 June 2017, Mr Jooste directly and/or indirectly published in the Steinhoff International Holdings NV Half-Year Report for 2017 that Mattress Firm Holding Corp. in the United States of America had an operating profit of

EUR 21 million when in fact it had an operating loss of EUR 53.64 million. Mr Jooste knew or ought reasonably to have known that the profit could only have been reported because of contribution transactions of EUR 80 million that had no economic substance that formed part of the published fact.

8.11. On 7 June 2017, Mr Jooste directly and/or indirectly omitted to publish in the Steinhoff International Holdings NV Half-Year Report for 2017 the following material facts that Mr Jooste knew (or ought reasonably to have known) rendered the publications false, misleading or deceptive because of such omission and which a reasonable user of the publications would have expected to have been informed of because of the requirements of IFRS:

8.11.1. that the only reason why Mattress Firm showed an operating profit instead of an operating loss was because of a contribution from a group company (which contribution never existed).

8.12. Therefore, Mr Jooste contravened section 81(1) (a) and (b) of the Financial Markets Act.

### **In summary**

8.13. While the above focusses on individual material facts in the published AFS and accompanying AR/ IR, the extent of the dishonesty and manipulation of the financial results of Steinhoff International and of how its financial position was

reported meant that the publications did not fairly represent its financial position, the results of its operations and its cash flows. They were false, deceptive and misleading. The publications failed to provide useful financial information to investors, lenders and other creditors. They provided false information about the cash balances on hand and false information to assess the prospects of future net cash flows arising from ordinary retail operations. They were deceptive in the extreme and misled the market into believing Steinhoff International was more profitable, more cash positive and more resourced than what was indeed the case. These were material misstatements that led to existing and potential investors, lenders and other creditors having false or misleading information with which to assess the prospects for future net cash inflows and consequently overvaluing Steinhoff International's performance and/or the recoverability of their investment or loan.

8.14. The mere publication of the fact that there were "accounting irregularities requiring further investigation" and Mr Jooste's resignation caused the share price to drop by 61.42% on the JSE during trading on 6 December 2017 following the announcement. This was the market's reaction without any confirmation of dishonest financial reporting or admission of false, misleading or deceptive previous publications. The expectation that the publications were prepared with due care and diligence to ensure a true and fair view was replaced by the suspicion that they were prepared to deceive. The market's response to the announcement illustrates the importance and reliance it places

on the overall integrity of Financial Statements and Annual Reports/Integrated Reports being prepared correctly, with due care and diligence, and with the intention to faithfully represent the economic phenomena being reported on. As soon as the potential of dishonest reporting became apparent, the market lost faith in future earnings.

## **RELEVANT FACTORS IN DETERMINING AN APPROPRIATE ADMINISTRATIVE PENALTY**

9. In imposing an administrative penalty, the FSCA took all the factors in section 167(2) of the Financial Sector Act into consideration. Each factor is dealt with in more detail below.

### *Deterrence*

10. Mr Jooste contravened section 81(1) of the Financial Markets Act and deserves an administrative penalty commensurate with the contravention's gravity and seriousness.
11. The FSCA is compelled to consider deterrence as a factor in determining an appropriate administrative penalty but not in isolation. Section 167(1)(a) of the Financial Sector Act, read with section 167(2)(a)(i), impress the need to deter the conduct identified through an appropriate administrative penalty.

12. There are two types of deterrence, i.e., specific deterrence and general deterrence. Specific deterrence deals with penalising the individual contravener for their conduct to keep the individual from future similar conduct. General deterrence uses the penalised contravener as an example to all potential contraveners that the conduct results in undesirable penalties.
13. When considering a penalty that would have the effect of meeting both goals of deterrence, the penalty must be of a nature that would deter not only the contravener but also those capable of such conduct. In this regard, care must be taken not over emphasize a person's ability to pay the penalty. A penalty set too low may achieve the goal of personal or specific deterrence but not general deterrence.
14. The FSCA thus considered the question "*What would deter a high net worth CEO such as Mr Jooste?*". In 2017 Mr Jooste received an income from Steinhoff International of R 243 381 288 (USD 18 291 780). According to an analysis by the Economic Policy Institute (EPI)<sup>2</sup>, in 2017 only the top 0.1% of individuals in the world earned more than USD 2 924 246 per year<sup>3</sup>. Mr Jooste represented one of the CEOs at the top with an income of six times such amount.
15. Over the relevant period of Mr Jooste's conduct, i.e., 2014 to 2017, Mr Jooste received an income of R 651 531 222 from Steinhoff International alone. His income

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<sup>2</sup> EPI analysis of the Social Security Administration wage statistics and Kopczuk, Wojciech, Emmanuel Saez, and Jae Song. 2010

<sup>3</sup> <https://www.epi.org/data/#ssa>.

from other business interests is unknown to the FSCA. He did not respond to the invitation to disclose such income fully.

16. As Mr Jooste's income and, more specifically, bonuses and share options were mainly dependent on his performance, his conduct may have been motivated by the prospect of higher levels of income. For effective general deterrence, the FSCA determined that the penalty will have to be sufficiently large to deter persons in positions akin to that of Mr Jooste as CEO and Executive Director of Steinhoff International.
17. Concerning personal deterrence, The FSCA determined that the penalty should be sufficiently large to avoid a penalty amounting to an overly mild punishment or a reprimand.

#### *Mr Jooste's Cooperation*

18. Mr Jooste attended the FSCA interviews under notice and on dates arranged with his legal representatives. He responded to questions, but his responses, in many instances, did not amount to answering the questions put to him and of which he knew or should have known the answers. He persisted that there were no financial irregularities that he was aware of or participated in. To that extent, he complied with the notice to attend but failed to provide all answers and information relevant to the investigation in a cooperative manner.

19. He denied that any accounting irregularities existed, that he had knowledge of the debt the TG Group owed, or that he signed the *wechsels* used to disguise them. As far as the evidence and expert evidence obtained prove the contrary, the FSCA concluded that he intentionally lied.
  
20. Due to his dishonesty, the FSCA determined that the limited extent of his cooperation was not a mitigating factor, as it served to deceive and waste the time of the FSCA.

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

21. The nature, duration, seriousness and extent of the contravention are often good indicators of the harm caused, the state of mind and attitude to compliance of the contravener.
  
22. The FSCA determined that the false, misleading or deceptive statements of material facts (the conduct) were knowingly and deliberately published as such for at least three and a half financial years and were intended to continue in the future. The nature of the conduct, alternatively "scheme" allowing for the conduct, was sophisticated and designed to avoid detection by Steinhoff International's group auditors. With an actual market loss of approximately R220 billion, there can be no doubt that the conduct was both serious and with actual prejudice to others.

23. Mr Jooste was in a position of confidence and owed a duty of care to the company, its employees and investors. The FSCA determined that that Mr Jooste chose to abuse his position to inflate the financial results of Steinhoff International and inflate its published financial position.

*Any Loss or Damage Suffered By Any Person as a Result of Mr Jooste's Conduct*

24. On 7 December 2017, the share price opened at 1 800 cents per share (cps) to close at 1 000cps. This resulted in a decrease of 80.09% from the closing price of 5 025cps on 4 December 2017. By 29 December 2017 the share price closed at 465cps - a decrease of 91.66% from the closing price of 5 116cps on 1 December 2017.
25. On 4 December 2017, Steinhoff International's market cap decreased by R 23.9 billion, with an increase of R 975.7 million in the value traded on the day.
26. On 5 December 2017, the market cap decreased by a further R 19.8 billion, again due to the decrease in share price.
27. On 6 December 2017, Steinhoff International's market cap decreased dramatically by R 120,844 billion and an increase of R 4 billion in the value traded on the day. There was an increase of 65 954 transactions in Steinhoff International shares from the previous day.



28. On 7 December 2017 the market cap decreased by a further R 32.8 billion. This trend continued for the rest of the month, and at the end of December 2017, the market cap of Steinhoff International was only R 20 billion. This equates to a total loss in market cap of R 220.4 billion from 1 December 2017 to the 29 December 2017.
29. By the time Steinhoff International published its restated financial results for 2017 on 9 May 2019, the share price closed at 160cps.
30. Steinhoff International carried a provision for its litigation settlement proposal<sup>4</sup> (a proposal for the settlement of the outstanding litigation announced on 27 July 2020, as amended from time to time and detailed in the Settlement Term Sheet) to the value of EUR 641 648 000 (R11 269 200 000) in its 2021 AFS to settle the claims it had received for market purchase claims (claims involving market-traded securities arising from false publication), contractual claims (claims in respect of contractual arrangements involving the company, sold businesses and otherwise) and other claims.
31. The investors in the Steinhoff International share included retirement funds, institutional investors and individuals. The losses to the market were undeniably substantial and resulted from the scheme described above, of which Mr Jooste was the mastermind.

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<sup>4</sup> See <https://www.steinhoffsettlement.com/case-documents.aspx>

*The Extent of Any Financial or Commercial Benefit To Mr Jooste*

32. Mr Jooste received salaries, bonuses, and shares for work supposedly done to benefit Steinhoff International.
  
33. During the period 2014 to 2017, Steinhoff International paid Mr Jooste cash or benefits as part of his remuneration totalling R 710 939 749. This amount comprised of salary, bonuses and long-term incentives. His earnings per year were as follows:
  - 33.1. 2014 year - R89 120 854
  - 33.2. 2015 year - R143 258 996
  - 33.3. 2016 year - R175 770 084
  - 33.4. 2017 year - R243 381 288
  
34. His remuneration was linked to the company's overall performance and was thus inflated by the overstated false, misleading and deceptive annual results. He also benefitted from the increases in Steinhoff International share values as he received share incentives and dividends over the years.
  
35. By disposing of his shares to corporate entities or trusts or providing shares as security, he was able to purchase other assets for personal benefit or the benefit of the trusts in which he held his assets.

36. Disgorgement of profits is not used for purposes of calculating Mr Jooste's penalty. The FSCA used the above as a reasonability test to determine whether sufficient deterrence to Mr Jooste and other directors of JSE-listed companies is built into the penalty.

*Whether Mr Jooste Previously Contravened a Financial Sector Law*

37. The FSCA previously found that Mr Jooste had contravened section 78(5) of the Financial Markets Act and imposed a penalty of R 20 million in terms of section 167 of the Financial Sector Act. The FSCA's finding and penalty imposed was upheld by the Financial Services Tribunal on reconsideration.

38. The JSE found that Mr Jooste failed to comply with the Listing Requirements prescribed by the JSE for Steinhoff International and imposed a penalty in terms of section 11(g) of the Financial Markets Act. The JSE's finding and penalty imposed was upheld by the Financial Services Tribunal on reconsideration.

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

39. In terms of section 7(1) of the Financial Sector Act, the object of the Act is to achieve a stable financial system that works in the interests of financial customers and that supports balanced and sustainable economic growth in South Africa by establishing a regulatory and supervisory framework that promotes, *inter alia*, financial stability, the efficiency and integrity of the financial system, the prevention of financial crime and confidence in the financial system.

40. The Steinhoff International share price collapse resulted from the disclosure to the market that there were “financial irregularities” and that Mr Jooste, the CEO, had resigned had a significant effect on the financial markets in South Africa. In respect of Steinhoff International, the JSE market lost R 200 billion in market capitalisation. These losses were borne by individual investors who owned Steinhoff International shares and by many retirement funds and other collective investment schemes.
41. The loss to the market also affected market confidence and South Africa’s reputation as a well-regulated and safe market.
42. The collapse of the Steinhoff International share price and the subsequent disclosure of the very significant quantum of the reduction in asset value and earnings in the restated Steinhoff International financial statements have been described as South Africa’s Enron<sup>5</sup>, and have left a lasting suspicion of the quality of South African published annual financial statements. The high levels of publicity and public disgust expressed about the accounting irregularities and the ongoing news articles indicate that it is an issue that continues to be of concern to the investing public. The reputation and credibility of the financial system were indeed affected.

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<sup>5</sup> Enron Corp’s collapse was the biggest corporate bankruptcy to ever hit the financial world (since then, it has been surpassed by the bankruptcies of other former giants, including Lehman Brothers, Washington Mutual, WorldCom, and General Motors). The Enron scandal drew attention to accounting and corporate fraud as its shareholders lost \$74 billion in the four years leading up to its bankruptcy, and its employees lost billions in pension benefits. At Enron’s peak, its shares were worth \$90.75; just prior to declaring bankruptcy on Dec. 2, 2001, they were trading at \$0.26.

43. As regards the effect on the functioning of systems of institutions and markets through which shares were traded, the effect was minimal. Still, the events nevertheless required additional government (IRBA, CIPC, FSCA, SARB) and non-governmental (SAICA, JSE) actions.
44. The Standing Committee on Finance spent valuable time with the Regulators (SARB, FSCA, IRBA), the JSE, the NPA and Steinhoff International to establish what went wrong with Steinhoff International and what the loss and possible recovery of investments would be.
45. Accurate and reliable financial reporting in respect of companies can benefit society.<sup>6</sup> Conversely, misleading and fraudulent financial reporting can have a negative impact on society.<sup>7</sup> One need not look to far back in history to note the severe financial losses (and resulting socio-economic prejudice) caused by improper accounting practices seen in recent times: Enron Corp's undisclosed related party transactions (which led to the company's eventual liquidation) remain

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<sup>6</sup> Investors need this information to make good choices about how to invest their money. Financial reporting is essential for effective capital allocation, which, in turn, is critical to our economy' (Pierce, "Pondering financial reporting: Remarks before the 2018 Leet business Law Symposium" (2019) 69(4) *Case Western Reserve LR* 849 849 AT 853.

<sup>7</sup> Raab, 'Detecting and preventing financial statement fraud: The roles of the reporting company and independent auditor' ((1987) 5(2) *Yale Law & Policy Review* 514 at 514.

legendary<sup>8</sup>, while the more recent revelations of account irregularities at Steinhoff International provided a South African example<sup>9</sup>.

46. Raab suggests that fraudulent accounting practices can best be reduced by 'focusing on persons within the reporting entity itself.'<sup>10</sup> Within a company, several persons and bodies may contribute to the compilation and review of financial statements, including accounting staff, executive management, internal auditors, and the audit committee. In most cases, the responsibility of ensuring a company's compliance with its legal obligation will rest with its board of directors.<sup>11</sup> However, a company's board can (and often does) delegate the financial reporting function to any person, including internal or external accounting professionals. Quite clearly, there is a need for the effective enforcement of the law regarding the compilation and presentation of accurate and reliable financial statements.

47. The FSCA concluded that Mr Jooste's conduct negatively affected the financial system as news of his conduct in the local and international media reflected

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<sup>8</sup> For a discussion of the factors and practices that led to the demise of Enron, see Powers, Troubh & Winokur, 'Report of Investigation by the Special Investigative Committee of the Board of Directors of Enron Corp.' (2002) (the Powers Report), available at <http://i.cnn.net/cnn/2002/LAW/02/02/enron.report.pdf>, accessed on 24 June 2020; Carpenter, 'Special Purpose Entities: A description of the now loathed corporate financing tool' (2002) 72 *Mississippi LJ* 1065 at 1065 and 1067; and Schwarcz, 'Enron and the use and abuse of Special Purpose Entities in corporate structures' (2002) 70 *University of Cincinnati LR* 1309 at 1309-1318.

<sup>9</sup> To these examples can be added the more recent accounting -related share price collapse at Tongaat Hulett. See De Villiers, 'Tongaat Hulett scandal: Deloitte replaces senior auditors and launches an internal investigation' (2019), available at <https://www.businessinsider.co.za/tongaat-hulett-deloitte-replaces-auditing-leadership-team-launches-investigation-2019-6>, accessed on 21 April 2020.

<sup>10</sup> Raab, 1987)5(2) *Yale Law & Policy Review* 514 at 519.

<sup>11</sup> Section 66(1) of the Act expressly contemplates that a company's Memorandum of Incorporation (Moi) may depart from the default legislative position regarding the board's collective duty to manage the business of the company

negatively on the financial system and impinged on investor confidence in investing in South African companies listed locally and abroad and caused negative sentiment towards foreign and local investment in South Africa.

*The Effect of the Proposed Penalty on Financial Stability*

48. The penalty will not harm the financial stability of the markets. Instead, it will 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.
49. 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*

50. At the time of the contravention, Mr Jooste had approximately 16 to 19 years of experience as an executive of a listed entity (Steinhoff International) and a Chartered Accountant (SA) registered with SAICA. He was more blameworthy than others because he acted deliberately in contravention of the law and was well qualified to understand his conduct's implications. The FSCA believes that professionals in the financial industry must be punished proportionately.
51. From the evidence collected, Mr Jooste acted deliberately and without regret.

## MR JOOSTE'S SUBMISSIONS REGARDING PENALTY

52. In paragraph 8.1 of the *audi* letter, Mr Jooste was invited to make submissions to the FSCA on the content of the *audi* letter, the investigation report, and the proposed administrative penalties and that such submissions should include mitigating factors.
53. It appears that Mr Jooste elected to ignore the invitation and chose to only respond to the report. The only mention Mr Jooste makes in respect of the quantum of the intended penalty in his submissions is where he compares the proposed penalty against himself with the reduced penalty imposed on Steinhoff International – “*Steinhoff ultimately paid a penalty nine times less than the penalty FSCA intends imposing on me*”. In this regard, it should be noted that the FSCA imposed an administrative penalty of R 1.5 billion on Steinhoff International under section 81 of the Financial Markets Act. The FSCA took into consideration several considerations, including Steinhoff International’s commitment to continue co-operating fully with the FSCA in all future actions taken against any persons allegedly responsible for the wrongdoing, the FSCA therefore resolved, under section 173 of the Financial Markets Act, to remit a portion of the administrative penalty resulting in Steinhoff International paying a penalty of R53 million.
54. Section 173 of the Financial Markets Act is still available to Mr Jooste should a penalty be imposed on Mr Jooste.



55. The penalty and reasons for the penalty are addressed in the *audi* letter and Mr Jooste should have addressed all issues raised in the *audi* letter.
56. In the premises and having considered all the above the FSCA accordingly imposes on Mr Jooste an administrative penalty calculated as follows:

### **THE ADMINISTRATIVE PENALTY IMPOSED**

57. For the reasons set out herein, and after having considered the factors as set out in section 167 of the Financial Sector Act, the FSCA has decided to impose the following administrative penalties on Mr Jooste:
- 57.1. An administrative penalty of R 475 million (Four Hundred and Seventy Five Million Rand) that includes a contribution of R 10 million (Ten Million Rand) to reimburse the FSCA for reasonable costs incurred in connection with the investigation of the contravention; and
- 57.2. Interest on the amount of R 475 million (Four Hundred and Seventy Five Million Rand) at the rate of 11.75% (as prescribed by the Minister in GN 4075 in GG 49720 of 17 November 2023 in terms of the Prescribed Rate of Interest Act, 55 of 1975) calculated from the date of this Order to the date of payment, both days inclusive.
58. The penalties are payable to the FSCA within 30 days from the date of this Order.

**MR JOOSTE SHOULD FURTHER TAKE NOTE THAT:**

59. 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.”*

60. 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 Financial Services Tribunal (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.

The secretary of the Tribunal is contactable at (012) 741 4302 or per electronic mail at

[Applications@fstribunal@fsca.co.za](mailto:Applications@fstribunal@fsca.co.za).

Signed at Pretoria on the **19th** day of **March 2024**.

A handwritten signature in black ink, appearing to read 'U Kamlana', written over a horizontal line.

**U KAMLANA**

**COMMISSIONER**

**FINANCIAL SECTOR CONDUCT AUTHORITY**