THE FINANCIAL SECTOR CONDUCT AUTHORITY

Investigation 369a

In the matter between:

FINANCIAL SECTOR CONDUCT AUTHORITY

and

DIRK BERND SCHREIBER

ADMINISTRATIVE ORDER IN TERMS OF SECTION 167 (1) READ WITH SECTION 156 OF THE FINANCIAL SECTOR REGULATION ACT NO 9 OF 2017

INTRODUCTION

1. This is an administrative order in terms of section 167(1)[1] read with section 156(1)[2] of the Financial Sector Regulation Act, 9 of 2017 (the Financial Sector Act).

[1] "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;"

[2] "156(1)***. Leniency agreements***
The responsible authority for a financial sector law may, in exchange for a person's co-operation in an investigation or in proceedings in relation to conduct that contravenes or may contravene that law, enter into a leniency agreement with the person, which may provide that the responsible authority undertakes not to impose an administrative on the person in respect of the conduct."

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 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.

3. 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.

4. The investigation concluded that Mr Dirk Bernd Schreiber (Mr Schreiber) contravened section 81(1)(a) and (b) of the Financial Markets Act during the financial years 2014 to 2016.

5. 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.

6. 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.

7. Section 167(1) of the Financial Sector Act, read with section 81 of the Financial Markets Act, empowers the FSCA to impose an administrative penalty, payable to the FSCA, if a person is found to have contravened a financial sector law, including the Financial Markets Act.

8. In terms of section 156(1) of the Financial Sector Act, the FSCA may, in exchange for a person's cooperation in an investigation, enter into a leniency agreement with that person, which may provide that the FSCA undertakes not to impose an administrative penalty on the person in respect of conduct which includes the contravention of sections 81(1)(a) and (b) of the Financial Markets Act (the conduct).

9. In terms of section 156(3) of the Financial Sector Act, the FSCA may not enter into a leniency agreement unless it is satisfied that it is appropriate to do so and after having regard to the matters set out in the subsections of section 156(3) of the Financial Sector Act.

10. On 21 June 2021 the FSCA entered into a leniency agreement with Mr Schreiber subject to section 156(3) of the Financial Sector Act.

11. On 15 December 2022 the FSCA notified Mr Schreiber in a letter (the *audi* letter) of the FSCA's finding that he had contravened section 81(1) (a) and (b) during the financial years 2014 to 2016.

12. Mr Schreiber was invited to make submissions by 31 March 2023 on the findings of the FSCA's investigation and to indicate whether the fact of publishing the leniency agreement would create an unjustifiable risk to his safety.

13. Upon an indulgence sought and granted, Mr Schreiber delivered his submissions on 2 May 2023. The submissions included a covering letter from Mr Schreiber's attorney. The covering letter confirmed that Mr Schreiber and his attorneys (in South Africa and in Germany) have considered the investigation report, and that Mr Schreiber did not require his attorneys to furnish the FSCA with a lengthy response to the investigation report, but to rather highlight certain material aspects thereof.

DECISION ON MERITS

14. The FSCA finds as follows:

2014

14.1. On 9 September 2014, Mr Schreiber 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 Schreiber knew or ought reasonably to have known were false, misleading or deceptive as Mr Schreiber had created transactions 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.

<table>
<tr><th></th><th>1</th><th>2</th><th>3</th><th>4</th></tr>
<tr><th></th><th></th><th>Material fact as published</th><th>Adjusted version of the material fact</th><th>Value of misstatement</th></tr>
<tr><td>1</td><td>Operating profit before tax</td><td>R 14 122 000 000</td><td>R 10 863 127 860</td><td>R 3 258 872 140</td></tr>
<tr><td></td><td colspan="4">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.

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.</td></tr>
<tr><td>2</td><td>Cash and cash equivalents</td><td>R 16 341 000 000</td><td>R2 612 924 620</td><td>R 13 728 075 380</td></tr>
<tr><td></td><td colspan="4">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 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 .</td></tr>
</table>

14.2. On 9 September 2014, Mr Schreiber 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 Schreiber 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):

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

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

2015

14.4. On 8 September 2015, Mr Schreiber 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 Schreiber knew (or ought reasonably to have known) were false, misleading or deceptive because Mr Schreiber had created transactions which had no economic substance forming part of these published facts and distributed such false revenues. 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.

<table>
<tr><th></th><th>1</th><th>2</th><th>3</th><th>4</th></tr>
<tr><th></th><th></th><th>Material fact as published</th><th>Adjusted version of the material fact</th><th>Value of misstatement</th></tr>
<tr><td>1</td><td>Operating profit before tax</td><td>R 16 638 000 000</td><td>R 13 393 142 401</td><td>R 3 244 857 599</td></tr>
<tr><td></td><td colspan="4">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.

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.</td></tr>
<tr><td>2</td><td colspan="2">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.</td><td colspan="2">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.</td></tr>
<tr><td>3</td><td colspan="2">For Conforama, the 2015 IR at p27 reports a margin of 5% (EUR 160 million/ EUR 3 226 million).</td><td colspan="2">Without the EUR 31.1 million contributions, this margin would be reduced to 4%.
There was no note indicating that internal transfers created the reported margin.</td></tr>
<tr><td>4</td><td>Cash and cash equivalents</td><td>R37 905 000 000</td><td>R6 527 353 629</td><td>R31 377 646 370</td></tr>
<tr><td></td><td colspan="4">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.</td></tr>
<tr><td>5</td><td>Goodwill Steinhoff UK</td><td>R4 550 000 000</td><td>R624 200 000</td><td>R3 925 800 000</td></tr>
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<tr><td></td><td colspan="4">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.</td></tr>
<tr><td>6</td><td colspan="2">P55 of the 2015 Integrated Report states: “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.”</td><td>The impairment tests under IFRS should have resulted in a full write-off of the Steinhoff UK goodwill</td><td></td></tr>
<tr><td>7</td><td colspan="2">The 2015 AFS states:
“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…”</td><td>Contributions paid by SEGS were inter-company transactions that were not at arm’s length</td><td>The published statement was false or misleading or deceptive</td></tr>
</table>

14.5. On 8 September 2015, Mr Schreiber 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 Schreiber 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:

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

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

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

2016

14.7. On 6 December 2016, Mr Schreiber 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 Schreiber knew (or ought reasonably to have known) were false, misleading or deceptive because Mr Schreiber had created transactions which had no economic substance forming part of these published facts and distributed such false revenues. 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 The graph		Without the GBP 40 million transfers, Steinhoff UK's operating profit would have been reduced by	

	1	2	3	4
		Material fact as published	**Adjusted version of the material fact**	**Value of misstatement**
	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.		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: *"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…*" .	Contributions paid by SEGS were inter-company transactions that were not at arm's length	The published statement was false or misleading or deceptive

14.8. On 6 December 2016, Mr Schreiber 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 Schreiber 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:

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

14.8.2. 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.

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

In summary

14.10. 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 consolidated financial results of Steinhoff International, and 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.

14.11. 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.

ORDER: LENIENCY AGREEMENT

15. Mr Schreiber proposed no submissions regarding unjustifiable risk to his safety if the FSCA publishes the leniency agreement as per section 156 (4) of the Financial Sector Act.

16. The FSCA is not aware of any existing reasons why the leniency agreement should not be published as per section 156 (4) of the Financial Sector Act.

17. After having considered the factors as per section 156 (1), (2) and (3) of the Financial Sector Act, the FSCA is satisfied that it appropriately entered into a leniency agreement with Mr Schreiber and that it may publish the leniency agreement as per section 156(4) of the Financial Sector Act.

18. The FSCA decided not to penalize Mr Schreiber with an administrative penalty for contravention of section 81(1)(a) and (b).

MR SCHREIBER SHOULD FURTHER TAKE NOTE THAT:

19. In terms of section 230 of the Financial Sector Act, a person aggrieved by the FSCA's 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 FSR Act.

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

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

U KAMLANA
COMMISSIONER
FINANCIAL SECTOR CONDUCT AUTHORITY