

**CONFIDENTIAL:**

**LENIENCY AGREEMENT IN TERMS OF SECTION 156 OF THE FINANCIAL SECTOR  
REGULATION ACT, ACT 9 OF 2017 (the “FSR Act”)**

1. The Financial Sector Conduct Authority (the “Authority”) is statutorily responsible for supervising and enforcing compliance of financial sector laws, which includes the FSR Act.
2. This leniency agreement will be concluded between Mr Dirk Bernd Schreiber (a German national residing in Oldenburg, Germany) and the Authority (both “the parties”).
3. Mr Schreiber wishes to enter into this leniency agreement with the Authority on a voluntary basis and will not be receiving - or is not expecting any payment for his assistance to the Authority.
4. Mr Schreiber is assisted by Mr Tony Canny (“Mr Canny”) from Lawton’s Africa in Sandton, Gauteng who is acting as his South African legal advisor.
5. Mr Schreiber is also assisted by Mr Philipp Behrendt (“Mr Behrendt”), a practising attorney from the firm Flick Gocke Schaumberg (“FGS”) at the Bonn branch in Germany.
6. Mr Schreiber is furthermore assisted by Dr Karsten Randt (“Dr Randt”), a practising attorney and partner at FGS at the Bonn branch in Germany.
7. Mr Canny, Mr Behrendt and Dr Randt are Mr Schreiber’s legal representatives of choice.



## Background Facts

8. During April 2018 the Authority appointed investigators to commence with market abuse investigations in terms of the Financial Markets Act, Act 19 of 2012 (the “FMA”) regarding Steinhoff International Holdings N.V. (“Steinhoff”) securities.
9. The Authority’s investigators commenced with an investigation into contraventions of section 81 of the FMA (publication/ making of a false/ misleading or deceptive statements).
10. The Authority’s investigators are currently busy with the section 81- investigation against individuals previously employed by Steinhoff or by some of its subsidiaries.
11. The Authority’s investigation covers the period of 2014 to 2017.
12. During the period of investigation, Mr Schreiber was the Chief Financial Officer (“CFO”) of Steinhoff Europe AG (“Steinhoff Europe”).
13. Mr Schreiber was the CFO of Steinhoff Europe since 1 October 2011 to June 2018. Mr Schreiber was, however, not responsible for external funding, acquisitions and operational management at the Steinhoff group.

## Leniency Agreement

14. The **Authority** is satisfied that:
  - 14.1 It is complying with section 156(3) of the FSR Act, when entering into a leniency agreement with Mr Schreiber;
  - 14.2 The Authority had regard to, amongst other matters, the following aspects before taking the decision to enter into the leniency agreement:
    - 14.2.1 The nature and effect of the contraventions (Section 81 of the FMA);



- 14.2.2 The nature and extent of the Mr Schreiber's involvement in the contraventions under investigation; and
- 14.2.3 The extent of the Mr Schreiber's co-operation with the Authority with an investigation of section 81 of the FMA - contraventions.
- 14.3 Mr Schreiber acknowledges that he is aware that, in terms of section 156(4) of the FSR Act, the Authority must publish the leniency agreement unless the Authority determines that the publication may create an unjustifiable risk to Mr Schreiber's safety or prejudice the investigation.
- 14.4 In terms of the leniency agreement, Mr Schreiber will provide his full assistance to the Authority in the following regard:
- 14.4.1 Answering the questions of - and providing relevant information to the Authority's investigators, including self-incriminating evidence, on the topic of the Authority's investigation of contraventions of section 81 of the FMA by several individuals to be identified (subject to the provisions of section 140 of the FSR Act);
- 14.4.2 Attending virtual meetings with the Authority's investigators on the Microsoft Teams platform and providing all relevant information requested regarding aspects of the Authority's investigation. The dates of such virtual meetings to be arranged to suit all appropriate parties;
- 14.4.3 If considered necessary by the Authority's investigators, Mr Schreiber will meet in person with the investigators in Europe at a location, date and time agreed upon; for Mr Schreiber to provide the requested information and to validate documents shown to Mr Schreiber during such a meeting;
- 14.4.4 Providing any other reasonable assistance requested by the Authority's investigators regarding aspects of the Authority's investigation that may arise in future;





- 14.4.5 Maintaining confidentiality of all information discussed with the Authority's investigators regarding the Authority's investigation;
- 14.4.6 Ensuring that confidentiality extends to Mr Schreiber's legal representatives and that legal privilege applies to any disclosure of information made to his legal representatives, which disclosure will only be made for purposes of seeking assistance when questioned by the Authority's investigators and in seeking legal advice in respect of the Authority's investigation;
- 14.4.7 Not using any information obtained during consultations/ meetings with the Authority's investigators, that Mr Schreiber was not aware of prior to the interviews held with the Authority, in any manner and for any purpose other than directed by the Authority's investigators; and
- 14.4.8 No making of any recordings of the online discussions/ interviews with the Authority's investigators by Mr Schreiber or any of his legal representatives.

14.5 The **Authority** undertakes in terms of the leniency agreement:

- 14.5.1 If the Authority's decision makers make a finding against Mr Schreiber regarding his guilt on a contravention of section 81 of the FMA; the Authority will not penalize Mr Schreiber in terms of the finding with an administrative penalty;
- 14.5.2 That Mr Schreiber's self-incriminating testimony will be provided to the Authority's investigators subject to section 140 of the FSR Act and therefore not admissible as evidence in a criminal court of law except in criminal proceedings for perjury or in which Mr Schreiber is tried for a contravention of section 273 of the FSR Act, based on the false or misleading nature of the answer;
- 14.5.3 Should the Authority be forced by any law or order of a competent court to provide incriminating evidence implicating Mr Schreiber and

which evidence was received from Mr Schreiber, it will inform Mr Schreiber and his legal representative before the information is provided.

14.5.4 The Authority will not expect Mr Schreiber to travel to South Africa to assist with this market abuse investigation.

14.6 By way of a notice to Mr Schreiber and his legal representatives (representing him in this specific matter of assistance to the Authority), the Authority will inform Mr Schreiber if the Authority terminates the leniency agreement.

14.7 Termination of the leniency agreement will happen if:

14.7.1 Mr Schreiber and his legal representatives neglect to maintain confidentiality of any information that he obtained from discussions with the Authority's investigators;

14.7.2 Mr Schreiber or his legal representatives intentionally or negligently interfere with - or hinder the Authority's investigation;

14.7.3 Mr Schreiber provides false or misleading information in relation to entering into this leniency agreement with the Authority;

14.7.4 Mr Schreiber provides false or misleading information to the Authority's investigators; and

14.7.5 Mr Schreiber fails to comply with the terms of this leniency agreement.

14.8 The Authority will afford Mr Schreiber a reasonable opportunity to make a representation in this regard before taking a final decision.

## **Interference with investigations**

15. Mr Schreiber understands that it is an offence in terms of the South African legislation as per section 139 of the FSR Act to refuse or fail to comply with any reasonable requests by the investigators in connection with the conduct of an investigation or to intentionally or negligently interfere with or hinder the conduct of the Authority's investigation by giving the investigators any information that is false or misleading (including by omission) and that is relevant to an investigation, while he knew that the information was false or misleading (including by omission).
16. Mr Schreiber understands that the aspects listed in point 14.4 above, all fall within the category of reasonable requests by the investigators regarding the Authority's investigation.
17. Mr Schreiber also understands that it is an offence in terms of the South African legislation as per section 273 of the FSR to provide information to the Authority in connection with its market abuse investigation, that he knew or believed, or ought reasonably to have known or believed, was false or misleading (including by omission) and that by doing so, he would commit an offence and would be liable on conviction to a fine not exceeding R10 000 000 or imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.

## **Governing Law**

18. This leniency agreement shall be governed and construed by the laws and courts of the Republic of South Africa, and all disputes, actions, and other matters in connection therewith shall be determined in accordance with such law.

## **Waiver and Modification**

19. No waiver of any breach of this agreement will constitute a waiver of any subsequent breach, and no waiver will be effective unless in writing and signed by the party to be charged. This agreement may not be amended or modified except in writing signed by or on behalf of the parties.



## **Severability**

20. If any provision of this agreement is held to be invalid, illegal, or unenforceable in any respect by a court or administrative body of competent jurisdiction, then unless otherwise agreed, this agreement will continue in full force and effect except for such provisions, which will be deemed excised here from. In such an event, the parties hereby agree to use their best efforts to agree on substitute provisions, which, while valid, will achieve as closely as possible the same effect as the invalid provision(s). If the parties cannot agree on such substitute provisions and if, in the Authority' opinion, the invalid provisions are material, the Authority may terminate this agreement with immediate effect.

## **Counterparts**

21. This agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

## **Language**

22. The Parties agree that although this agreement may be translated into other languages, the English version of this agreement shall be the controlling version and govern all other versions.

## **Entire Agreement**

23. This agreement sets forth the entire agreement and understanding of the Authority and Mr Schreiber with respect to the subject matter herein, and supersedes all prior agreements, arrangements, and understandings, written or oral.

DATED ON THIS 21 DAY OF JUNE 2021



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**DIRK BERND SCHREIBER**

The aforesaid leniency agreement is accepted by the Financial Sector Conduct Authority in terms of section 156 of the FSR Act, 2017.



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**BRANDON TOPHAM**

Divisional Executive: Enforcement & Market Integrity

For the Financial Sector Conduct Authority