

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG, PRETORIA**

Case number: 11121/21

In the matter between

TRUSTCO GROUP HOLDINGS LIMITED

Applicant

and

JSE LIMITED

First Respondent

FINANCIAL SERVICES TRIBUNAL

Second Respondent

FIRST RESPONDENT'S ANSWERING AFFIDAVIT



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I, the undersigned,

ANDRIES FRANCOIS VISSER

state under oath that:

1. I am an adult male, employed by the JSE as the Director: Issuer Regulation. I am authorised to depose to this affidavit on the JSE's behalf. Its contents are true and, unless the context indicates otherwise, within my knowledge.

OVERVIEW

2. This application is not urgent. Nor is it necessary in light of Trustco seeking materially identical relief in an application that is pending before the Financial Services Tribunal. Trustco asks for this Court to intervene "[o]ut of caution". But busy urgent courts are not there for just-in-case litigation.
3. Interim relief also undermines the public interest. Trustco is a public company. As things stand, its shares are listed on the JSE and are freely available for members of the public to buy and sell. Members of the public decide to buy and sell listed shares based on, amongst other things, a company's published financial statements.
4. The whole purpose of requiring listed companies to publish financial statements, and to prepare them according to a generally applicable set of expert accounting standards, is to ensure that the market has access to reliable information about the financial affairs of listed companies.
5. The JSE, in its expert role as market regulator, decided that Trustco's financial statements do not comply with those expert accounting standards, known as



the International Financial Reporting Standards, or IFRS. The JSE directed Trustco to restate its financial statements.

6. The JSE made its decision as part of its proactive monitoring process. The JSE considered a report of the Financial Reporting Investigation Panel (or FRIP), an advisory body of experts, which conducted a thorough investigation of Trustco's compliance with IFRS. The FRIP panel comprises 15 experts in auditing and accounting standards. The Financial Services Tribunal, another expert body, dismissed Trustco's application to reconsider the JSE's decision.
7. Trustco refuses to restate its financial statements. The JSE has now decided to suspend Trustco's listing- a consequence that follows from the JSE's Listings Requirements, which the JSE is, by statute, obliged to enforce.
8. Trustco wants this Court to let it ignore the JSE's polycentric, expert decision- a decision that took into account the expert views of the FRIP, and a decision that was upheld by the expert Financial Services Tribunal- so that Trustco can continue with business as usual. It wants this Court to let it continue selling its shares to unsuspecting third parties on the open market despite its financial statements not fairly reflecting its true financial affairs.
9. This Court should decline Trustco's invitations. The market works only if financial statements are accurate. Trustco's urgent interim relief will tie the JSE's hands, leaving it powerless to exercise its statutory powers to regulate the market and protect the investing public.
10. In this way, Trustco asks for precisely the kind of relief that the Constitutional Court has cautioned should be granted only in the clearest of cases and only

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after careful consideration of the harm to the separation of powers. Trustco falls far short of that high hurdle.

11. Trustco should have restated its financial statements on 31 January 2022 when it published financial statements after the Tribunal had dismissed its reconsideration. It did not do so, and instead contemptuously ignored the JSE's and the Tribunal's decisions. Trustco has shown a marked disregard for the Tribunal's authority and has, in the end, ignored its decision. Trustco's conduct amounts to contempt of the Tribunal. This was done when Trustco had been warned by the JSE that the decisions of the JSE and the Tribunal were operative and had to be complied with unless an interdict was obtained. Trustco ignored this warning. This Court should, with respect, not come to Trustco's aid.
12. Nor does Trustco show why it is necessary for this Court to intervene. Trustco does not need interim relief to protect its right to review any decision: Trustco has already launched a review, and it does not allege that its right to review would somehow be scuppered without interim relief.
13. Trustco also waited unreasonably to launch this application. It launched its review on 31 January 2022. It saw no need for urgency then, nor any need for urgent interim relief – when it knew that the JSE had decided to suspend its shares. It chose to wait 1 month to bring this application, on 23 February 2022.
14. Worse, as far back as 17 December 2021, Trustco accused the JSE of having "*already ... made up*" its mind to suspend Trustco's listing, and that the decision to suspend its listing was a "*foregone conclusion*" (see the letter from Trustco's



attorneys attached to the founding affidavit as "FA3"). On Trustco's own version, it was already in a position to apply for urgent relief in December 2021.

15. Self-created urgency aside, Trustco does not explain why it would not obtain substantial redress in a hearing in the ordinary course. In the section of its founding affidavit dealing with urgency, Trustco argues- it is just that: argument, no facts- that "*[t]he market sentiment, in reaction to the suspension, will take immediate effect and, with devastating consequences for Trustco.*" But that does not explain why Trustco would not obtain substantial redress, either in the next few weeks or so from the Financial Services Tribunal, or in its review in the ordinary course.
16. Trustco has already applied to the Financial Services Tribunal for a suspension of the JSE's decision to suspend its listing. If the Financial Services Tribunal grants Trustco's suspension, the JSE will not be permitted to suspend Trustco's listing pending a reconsideration application before the Tribunal. Said another way, a suspension granted by the Tribunal would be a complete cure for any apprehended harm on Trustco's part.
17. Trustco's suspension application before the Tribunal is proceeding according to an expedited timetable. Trustco told the Tribunal about the JSE's deadline of 11 March 2022 when Trustco's suspension will take effect. The Tribunal's secretariat confirmed in correspondence that "*[b]y my calculations, the ruling in the application for suspension should be finalized before 11 March 2022 provided the timelines set out in the Tribunal rules are adhered to.*"
18. Trustco is candid that this application is in the urgent court just in case. In paragraph 12 of its founding affidavit, it describes this application having been



launched “[o]ut of caution” and in case the Tribunal does not decide its suspension application before 11 March 2022.

19. But there is no reason to doubt the Tribunal’s diligence. Trustco will have every opportunity to make out a case for suspension before the Tribunal. Its pending suspension application there renders this application *lis pendens* and, in any event, shows that Trustco would get substantial redress in the form of an expedited hearing before the Tribunal. The fact that Trustco is no by means guaranteed, if even likely, to obtain relief before the Tribunal does not change the fact that it could obtain substantial redress in that forum. There is no need for this Court to intervene, either urgently or at all.
20. Trustco’s application for interim relief is also bad on its merits. Most fundamentally, Trustco does not show why its right to review requires interim preservation. Nor does Trustco even allege, let alone show, that its review has any prospects of success. To the contrary, Trustco’s review is a non-starter because, on its own version, it is about the correctness of the decision it reviews, which confuses the distinction between an appeal and a review.
21. Trustco’s application should be struck from the roll or dismissed.

THE FACTS AND TRUSTCO’S FILIBUSTERING

22. Trustco is a Namibian company listed on the JSE. It describes itself as having a net asset value of N\$2 billion, or roughly R2 billion. Trustco’s CEO and majority shareholder is Dr Quintin van Rooyen. Dr van Rooyen was also the sole shareholder of Huso Investments (Pty) Limited (“Huso”).



23. Between 2015 and 2018, Dr van Rooyen advanced loans totalling approximately N\$546 million (or about R546 million) to Huso and its subsidiaries. In 2018, Trustco acquired all the issued shares of Huso. Dr van Rooyen was on both sides of the transaction: he was Trustco's CEO and majority shareholder, and he was Huso's sole shareholder.
24. In Huso's financial statements, Dr van Rooyen's loan was initially classified as equity (that is, it was recorded as money that Dr van Rooyen had invested in Huso as a shareholder). By the time Trustco acquired Huso, though, the loan had been reclassified as a liability (that is, money that was owed to Dr van Rooyen). The switch from equity to liability was not disclosed to Trustco's shareholders.
25. The sale of shares agreement for Trustco's purchase of Dr van Rooyen's shares in Huso included an earn-out mechanism for Dr van Rooyen. In short, through the mechanism, Dr van Rooyen earned shares in Trustco if Trustco met stipulated profit thresholds.
26. A few weeks after Trustco acquired Dr van Rooyen's Huso shares, Dr van Rooyen forgave his N\$546 million loan. Because Trustco had recognised the loan as a liability, it reflected the forgiveness of the loan as a gain of N\$546 million in its financial statements. This, in turn, triggered the earn-out mechanism in Dr van Rooyen's sale of shares agreement to his benefit.
27. Despite several opportunities, Dr van Rooyen and Trustco have never explained why Dr van Rooyen would forgive a loan of more than half-a-billion Rand. Trustco never explained it to the FRIP; Trustco never explained it to the



JSE; and Trustco never explained it to the Financial Services Tribunal. The Tribunal would later criticise Trustco for its *“repeated failure to take the FRIP, the JSE, and the Tribunal into its confidence”* on this issue.

28. Meanwhile, in 2019, Dr van Rooyen advanced a second loan of up to N\$1 billion (or R1 billion) to Trustco. A few months later, Dr van Rooyen’s generosity struck again, and he forgave this loan too, resulting in a N\$1 billion gain that Trustco recognised in its financial statements (and resulting in another reward for Dr van Rooyen through his earn-out mechanism).
29. On a separate issue, Trustco owns properties in a development in Elisenheim, just north of Windhoek. Trustco reclassified properties in the development from inventory to investment property. It justified the reclassification on the basis that a decline in demand meant that it did not anticipate selling the properties for the foreseeable future. After the reclassification, Trustco revalued the properties upwards which increased its profitability. Trustco then reported a N\$693 million gain in the profit and loss account in its financial statements (or revenue of N\$984 million against a cost of sales of N\$291 million).
30. On 5 December 2019, Trustco’s financial statements were selected for review under the JSE’s proactive monitoring review process. Under the proactive monitoring review process, the JSE reviews the financial statements of every listed company at least once every five years. The Trustco financials that were reviewed were its group annual financial statements for the year ending 31 March 2019, and its interim results for the six months ending 31 August 2018 (for convenience, I refer to both as **“Trustco’s financial statements”**, except where necessary to differentiate between them).



31. The JSE referred three issues to the FRIP. The FRIP is an advisory body to the JSE. It advises the JSE on, amongst other things, technical issues about listed companies' compliance with IFRS. The FRIP comprises a panel of IFRS experts. Individuals are appointed to the FRIP because they have in-depth technical knowledge of IFRS, technical accounting work experience, and recognition from their peers that they are IFRS experts.
32. The JSE referred three issues to FRIP:
- 32.1 The first issue related to Dr van Rooyen's two loans and Trustco classifying a "gain" in profit and loss after Dr van Rooyen forgave the loans (a N\$546 million gain in Trustco's 2019 annual financial statements, and a N\$ 1billion gain in its 2019 interim results). This became known as "**the loan issue**".
- 32.2 The second issue related to Trustco's reclassification of the Elisenheim properties from inventory to investment property in its financial statements and the resulting gain of N\$693 million. This became known as "**the property issue**".
- 32.3 A third issue also related to other property transactions, but Trustco subsequently rectified it to the JSE's satisfaction.
33. The FRIP sent a report to the JSE in July 2020. After considering all relevant information, including submissions on each issue from Trustco, the FRIP advised the JSE that, in its view, Trustco's reporting of the loan issue and the property issue did not comply with IFRS. Following the issuance of the FRIP

report, the FRIP chair also met with representatives of Trustco, giving Trustco a further opportunity to be heard.

34. On 16 October 2020, and after giving Trustco an opportunity to comment on the FRIP's report, the JSE decided that Trustco had not complied with IFRS in respect of the loan issue and the property issue.

35. Trustco objected to the JSE's decision in terms of paragraph 1.4 of the JSE Listings Requirements (which gives an issuer a right to object to any decision made under the Listings Requirements).

36. On 11 November 2020, the JSE dismissed Trustco's objection. The JSE directed Trustco to take corrective action, which included the following:

36.1 The JSE directed Trustco to restate its annual financial statements for year ended 31 March 2019, with the following corrections:

36.1.1 in respect of the first loan, Trustco must reverse the N\$546 million gain recognised in profit and loss; and

36.1.2 in respect of the property issue, Trustco must reverse the reclassification of the properties and reverse the N\$693 million gain recognised in profit and loss.

36.2 The JSE directed Trustco to restate its interim results for the 6 months ended 30 September 2019 in respect of the second loan by reversing the N\$1 billion gain recognised in profit and loss.



37. On 26 April 2021, Trustco applied to the Financial Services Tribunal for a reconsideration of the JSE's decision under section 230 of the Financial Sector Regulation Act.
38. On 22 November 2021, the Financial Services Tribunal dismissed Trustco's reconsideration application. The Tribunal's decision is attached to the founding affidavit as "FA1".
39. On 1 December 2021, Trustco published a SENS in which it, amongst other things, criticised the JSE's decision and asked shareholders to participate in a non-binding advisory vote on several issues that the JSE had already considered and decided, including a vote to endorse Trustco's accounting treatment of the loan issue and the property issue. I attach a copy of this SENS notice as "AA1". Regrettably, Trustco described the JSE's diligent process as "*unwarranted interference*" that "*undermine[d] the independence, accountability, and integrity*" of Trustco's board.
40. On 3 December 2021, the JSE wrote to Trustco. I attach a copy of the JSE's letter as "AA2".
- 40.1 The JSE recorded its concern that Trustco had not complied with the JSE's corrective action (listed in paragraph 36), and noted that it was clear from Trustco's SENS announcement that it had no intention of complying with that corrective action (and, therefore, no intention of complying with the decision of the Financial Services Tribunal).
- 40.2 The JSE informed Trustco that it was considering suspending Trustco's listing "*due to [Trustco's] failure to comply with important*



provisions of the Listings Requirements and [Trustco's] refusal to take the necessary steps to ensure that it complies, in all aspects, with the Listings Requirements and the decisions of the JSE and the Financial Services Tribunal." In the JSE's view, suspending Trustco's listing would be "*in the public interest*" and would "*further the objects of the Financial Markets Act.*"

- 40.3 The JSE gave Trustco an opportunity to make representations as to why the JSE should not suspend its listing.
41. On 9 December 2021, Trustco's attorneys, Norton Rose Fulbright, wrote to the JSE. I attach a copy of the letter as "AA3".
- 41.1 Trustco denied that it had decided not to comply with the JSE's decision and corrective action.
- 41.2 Trustco claimed it needed to "*obtain independent advice on the issues, and how to treat and practically implement the Tribunal's decision.*"
- 41.3 Trustco confirmed that it would be reviewing the Tribunal's decision under PAJA.
- 41.4 Trustco claimed that it would be "*premature*" for the JSE to suspend its listing before Trustco's review of the Tribunal's decision was determined, describing the JSE's threat of suspension as "*nothing short of an attempt by the JSE to coerce [Trustco] into compliance with a decision that is based on an unlawful and reviewable decision by the Tribunal*".



- 41.5 Trustco objected to what it deemed to be a self-standing decision by the JSE that Trustco had not complied with the JSE's corrective action (which Trustco labeled "the Non-Compliance Decision").
- 41.6 Trustco demanded an undertaking by 13 December 2021 that the JSE would not suspend its listing (which Trust labeled the "Suspension Decision") pending, amongst other things, first, a reconsideration application that Trustco intended to bring in the Tribunal against the JSE's decision that Trustco had not complied with the JSE's corrective action "and/or", second, the final determination of its review application (against the Tribunal's decision to dismiss Trustco's first reconsideration application).
- 41.7 Trustco indicated that if the JSE was "*not prepared to give the undertakings sought*" then it would "*approach the High court on an urgent basis*" to suspend "*the Non-Compliance and/or Suspension Decision pending either the review or a reconsideration application and suspension application to the Financial Services Tribunal.*"
42. The JSE responded to Trustco on 13 December 2021. A copy of the letter is attached to the founding affidavit marked "FA2".
- 42.1 The JSE confirmed that prior to its letter of 13 December 2021, it was still considering whether to suspend Trustco's listing; it had not yet suspended its listing.

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- 42.2 The JSE pointed out, based on basic principles of administrative law, that the Financial Services Tribunal's decision is final, binding, and immediately enforceable unless it is interdicted or set aside.
- 42.3 The JSE also pointed out that the Tribunal dismissed Trustco's reconsideration application, which means that the Tribunal confirmed the JSE's decision that Trustco had not complied with IFRS in respect of the loan issue and the property issue and must restate its financial statements. The JSE took that decision more than a year earlier, and so Trustco had ample opportunity to consider how to implement the corrective action.
- 42.4 The JSE then conveyed its decision to suspend Trustco's listing.
- 42.5 The JSE declined to give Trustco any undertakings, but noted that Trustco had a right to object to the JSE's decision to suspend its listing under paragraph 1.4 of the Listings Requirements.
43. Despite the JSE unequivocally refusing to give Trustco the undertakings it sought in its letter dated 9 December 2021, Trustco did not follow through on its threat to "*approach the High court on an urgent basis*".
44. On 14 and 15 December 2021, the parties exchanged correspondence. Trustco had spuriously contended that when I decided, on the JSE's behalf, to suspend Trustco's listing (in my capacity as the JSE's director of issuer regulation), that I was not properly authorised to do so. These letters are attached as "**AA4**" and "**AA5**".

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45. On 17 December 2021, Trustco delivered its objection to the JSE's decision to suspend its listing. A copy of the letter is attached to the founding affidavit marked "FA3".

45.1 Trustco described the decision to suspend Trustco's listing as a "*foregone conclusion*" and that "*[Andre Visser] had already made up his mind*" and simply "*rubber stamp[ed]*" the decision. According to Trustco, the decision to suspend its listing "*for all intents and purposes, had already been taken*". The objection process would also, according to Trustco, be a "*foregone conclusion*".

45.2 Despite these protests, Trustco set out the grounds for its objection against the JSE's decision to suspend its listing.

45.3 Trustco indicated that the "*earliest*" that it could "*possibility and legitimately be expected to give effect to the JSE and Tribunal's decision is when it will be in a position to publish its audited financial statements*". Trustco confirmed that its audited financial statements would "*reflect the restatements that the JSE required*", and indicated that it was "*anticipated*" that its audited financial statements would be published "*by no later than 31 January 2022*".

45.4 Trustco again asked for an undertaking that the JSE would not "*implement the suspension [of Trustco's listing] pending the outcome of an application for suspension of [the JSE's decision to suspend Trustco's listing] to the Tribunal and the outcome of Trustco's review application [of the JSE's decision that Trustco did not comply with IFRS in how it reported the loan issue and the property issue]*".



46. Trustco's letter expressly stated that its audited annual financial statements, which it undertook to publish by 31 January 2022, "*would ... reflect the restatements that the JSE required*". On that understanding, the JSE was prepared to hold off on deciding on Trustco's objection to the suspension of its listing but only if Trustco gave the JSE "*an unequivocal, and irrevocable undertaking that the necessary restatement of [Trustco's] annual financial statements will be implemented in [Trustco's] 31 August 2021 Annual Financial Statements*", which Trustco had, in its previous letter, indicated would be published by 31 January 2022. A copy of the letter from the JSE's attorneys to this effect is attached as "**AA6**".
47. On 13 January 2022, Trustco refused to give the JSE that undertaking. A copy of this letter is attached as "**AA7**". Trustco did, however, undertake to publish its 2021 annual financial statements by 31 January 2022.
48. Because Trustco stated that it was in the process of "*determin[ing] ... how to practically implement the restatements pending a review*", the JSE reasonably believed that Trustco was still intending on giving effect to the corrective action that the JSE had directed. On this understanding, the JSE was prepared to hold off on deciding on Trustco's objection to the suspension of its listing until it had considered Trustco's 2021 annual financial statements. This was recorded in a letter from the JSE's attorneys attached as "**AA8**".
49. A letter from Trustco's attorneys dated 26 January 2022, attached as "**AA9**", confirmed that Trustco's 2021 annual financial statements would "*address the restatements*" that the JSE had directed in its corrective action.
50. Trustco published its 2021 annual financial statements on 31 January 2022.



51. Trustco did not restate the comparative periods in its 2021 annual financial statements as the JSE had directed it to do. Trustco admits in paragraph 49 of its founding affidavit that "*there has not been a restatement*". The corrective action was clear: Trustco must reverse the N\$546 million gain recognised in profit and loss in respect of the first loan, Trustco must reverse the N\$1 billion gain recognised in profit and loss in respect of the second loan, and Trustco must reverse the N\$693 million gain in respect of the properties.
52. Trustco did none of that. It ignored the corrective action that the JSE directed. Instead of "*revers[ing]*" any gains and instead of restating any financial statements, it buried some commentary about the JSE's decision that Trustco had not complied with IFRS in the small print to its financial statements. In short, the JSE directed Trustco to restate the numbers in its financial statements (by a total of more than NS\$2 billion). Trustco left the numbers unchanged.
53. The same day, Trustco launched its review of the Tribunal's decision to dismiss its reconsideration application (of the JSE's decision that Trustco had failed to comply with IFRS in respect of the loan issue and the property issue).
54. Trustco launched its review in the ordinary course. It did not seek an urgent review and it did not seek any urgent interim relief. This notwithstanding that the JSE had alerted it of the need to do this in December 2021.
55. On 14 February 2022, and after considering Trustco's 2021 annual financial statements, the JSE dismissed Trustco's objection to the JSE's decision to suspend its listing. The JSE's letter is attached to the founding affidavit as "FA4". The JSE also published a SENS announcement to this effect, which is



attached to the founding affidavit as "FA5". The JSE indicated that it would give Trustco an opportunity to obtain urgent relief "*from a competent tribunal*" and, for that reason, the suspension would take effect from 11 March 2022 provided that any process was initiated and delivered by 18 February 2022.

56. On 18 February 2022, Trustco lodged two applications with the Financial Services Tribunal:

56.1 a reconsideration application under section 230 of the Financial Sector Regulation Act, asking the Tribunal to reconsider the JSE's decision to suspend Trustco's listing; and

56.2 a suspension application under section 231 of the Financial Sector Regulation Act, asking the Tribunal for, in effect, an interim interdict, or a suspension of the JSE's decision to suspend Trustco's listing pending the determination of the reconsideration application.

57. In Trustco's covering email to the Tribunal's secretariat, Trustco indicated that the JSE would enforce and implement its decision to suspend Trustco's listing if the suspension application were not determined by 11 March 2022 (the email chain is attached to the founding affidavit as "FA6").

58. About 30 minutes after Trustco lodged its two applications with the Tribunal, and itself an indication of the Tribunal's efficiency, diligence, and expediency, the secretariat acknowledged receipt of the applications and issued directions for the filing of the JSE's opposing affidavit (by 28 February 2022) and Trustco's replying affidavit (by 7 March 2022). This is reflected in the email chain attached to the founding affidavit as "FA6".



59. The secretariat also indicated that "*the ruling in the application for suspension should be finalised before 11 March 2022 provided the timelines set out in the Tribunal rules are adhered to*" (emphasis added). This also appears in the email attached to the founding affidavit as "FA6".
60. A week later, on 23 February 2022, Trustco launched this urgent application, demanding an answering affidavit just 4 court days later on 1 March 2022, and a hearing within 8 court days.

TRUSTCO HAS NOT SHOWN WHY THIS APPLICATION IS URGENT

61. I am advised that the test for urgency is whether Trustco would not obtain substantial redress in a hearing in due course.
62. Trustco argues that the suspension of its listing will have a "*catastrophic adverse effect*". Trustco never quite explains why. All it says is that "*the various market[s] will be unable to trade in Trustco's shares*" and that "*market sentiment ... will take immediate effect and, with devastating consequences for Trustco.*" Apart from stating conclusions, Trustco does not allege any facts that show why it would not obtain substantial redress in due course.
63. On Trustco's own version, it may obtain substantial redress in the next few weeks through its suspension application before the Financial Services Tribunal.
64. In its letters dated 9 December 2021 and 17 December 2021, Trustco threatened a suspension application before the Tribunal. It did so presumably because it believed that a suspension application would protect its rights.



65. Moreover, in its suspension application, Trustco alleges that the suspension of its listing would be "*significantly prejudicial to Trustco, its employees and shareholders*" and would have "*devastating consequences*" for Trustco.
66. Plus, in its founding affidavit in this application, Trustco is candid that it asks for relief from this Court "[o]ut of caution" because "[i]t is uncertain whether or not the Tribunal will hear [Trustco's suspension application], and render an award" before 11 March 2022.
67. Pulling those strands together, it is clear that on Trustco's own version, its suspension application before the Tribunal offers substantial redress. Trustco complains to the Tribunal about the harm that the JSE suspending its listing will cause, and it asks the Tribunal for interim relief. The Tribunal is seized with that application. It has directed an expedited timetable for the exchange of pleadings. Its secretariat expects the Tribunal will make its decision on the suspension application before 11 March 2022, and Trustco offers no reason to doubt the Tribunal's diligence and expediency.
68. For these reasons, Trustco has not shown that it would not obtain substantial redress in the ordinary course.
69. Even if its suspension application before the Tribunal is somehow not adequate, Trustco had ample opportunities to launch this application earlier. In particular:
- 69.1 It threatened urgent proceedings in its letters dated 9 December 2021 and 17 December 2021.
- 69.2 It could have brought urgent relief as part of its review, which it launched on 31 January 2022.



- 69.3 It could have brought urgent relief when it lodged its reconsideration application on 18 February 2022.
70. Trustco ought not to have waited so long before approaching this Court.
71. For these reasons, Trustco's application should be struck from the roll with costs.

TRUSTCO'S PENDING APPLICATION BEFORE THE FINANCIAL SERVICES TRIBUNAL MAKES THIS APPLICATION *LIS PENDENS*

72. Trustco has two applications pending before the Financial Services Tribunal:
- 72.1 a reconsideration application under section 230 of the Financial Sector Regulation Act, asking the Tribunal to reconsider the JSE's decision to suspend Trustco's listing; and
- 72.2 a suspension application under section 231 of the Financial Sector Regulation Act, asking the Tribunal for, in effect, an interim interdict, or a suspension of the JSE's decision to suspend Trustco's listing pending the determination of the reconsideration application.
73. Trustco's suspension application asks for materially the same interim relief as Trustco asks for in this application. I attach Trustco's notice of motion in the suspension application as "AA10". A side-by-side comparison between Trustco's notice of motion in the suspension application and Trustco's notice of motion in this application shows that Trustco seeks materially the same relief in each application.



73.1 In its suspension application, Trustco asks for a suspension (which has the same effect as an interim interdict) of the JSE's "*decision on 13 December 2021 and 14 February 2022*". This suspension would, in terms of section 231 of the Financial Sector Regulation Act, be pending the Tribunal's decision on Trustco's reconsideration application. In other words, Trustco's suspension application asks for, in effect, interim relief against:

73.1.1 the JSE's decision, dated 11 November 2020, that Trustco's financial statements did not comply with IFRS in respect of the loan issue and property issue, and that Trustco must restate its financial statements;

73.1.2 the Tribunal's decision, dated 22 November 2021, to dismiss Trustco's reconsideration application against the JSE's decision referred to in the previous sub-paragraph;

73.1.3 the JSE's decision, dated 13 December 2021, that Trustco had failed to comply with the decisions of the JSE and the Tribunal referred to in the two previous sub-paragraphs, and the JSE's decision to suspend Trustco's listing; and

73.1.4 the JSE's decision, dated 14 February 2022, to dismiss Trustco's objection to the JSE's decision to suspend its listing.

73.2 In this application, Trustco asks for an interim interdict against:

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- 73.2.1 the JSE's "*suspending [Trustco's] listing*", which is already covered by Trustco's suspension application (see paragraphs 72.1.3 and 72.1.4);
- 73.2.2 the JSE "*implementing [the Tribunal's] decision ... dated 22 November 2021*", which is already covered by Trustco's suspension application (see paragraph 72.1.2); and
- 73.2.3 the JSE "*implementing, or attempting to implement, the decision that Trustco restate its annual financial statements ... and ... interim results*", which is already covered by Trustco's suspension application (see paragraph 72.1.1).
74. In this way, there is a complete overlap between the relief that Trustco seeks in its suspension application in the Tribunal and the relief that Trustco seeks in this application. Trustco all but admits as much; it necessarily follows from Trustco describing this application as being launched "*[o]ut of caution*" in case the Tribunal does not decide its suspension application before 11 March 2022. The necessary implication is that if Trustco succeeds in its suspension application, there would be no need for the relief it seeks in this application.
75. There is only one difference between relief that Trustco seeks in its suspension application in the Tribunal and the relief that Trustco seeks in this application: the relief in the suspension application is pending Trustco's reconsideration application (against the JSE's decision to suspend its listing) while the relief in this application is pending Trustco's review (against the JSE's decision, confirmed by the Tribunal, that Trustco's financial statements do not comply with IFRS in respect of the loan issue and the property issue).



76. But that technical difference does not matter.

76.1 The reconsideration application before the Tribunal is likely to take about a year to determine (Trustco's first reconsideration application, against the JSE's decision that Trustco did not comply with IFRS in respect of the loan issue and the property issue, took 9 months, from when Trustco lodged it on 10 February 2021 to the Tribunal's decision on 22 November 2021).

76.2 There is no reason to believe that a similar timeframe would not apply to Trustco's latest reconsideration application (and the Tribunal's secretariat has already issued directions for it, as can be seen in the email chain attached to the founding affidavit).

76.3 If so, then the Tribunal is likely to decide the reconsideration application by around November 2022.

76.4 There is no reason why Trustco's review cannot be determined in a similar time frame (Trustco asks for an evergreen interim interdict that includes "*any appeal*", which is impermissible for reasons that will be addressed in argument).

76.5 This means that the practical effect of Trustco succeeding in its suspension application would be the same as the practical effect of it succeeding in this application: pending its review in this Court and pending its reconsideration application in the Tribunal, the status quo will remain.



- 76.6 Of course, none of this is to say Trustco should succeed in its suspension application or in this application. But it does show that Trustco's pending suspension application in the Tribunal negates any need for this Court to intervene.
77. For these reasons, there is pending litigation between the same parties, based on the same causes of action, for materially the same relief, in respect of the same subject-matter, making this application *lis pendens*.

TRUSTCO DOES NOT MAKE OUT A CASE FOR INTERIM RELIEF

Interim relief is incompetent because the time for Trustco to restate its financial statements has come and gone

78. On 11 November 2020, and as part of its corrective action, the JSE directed Trustco to "[r]estate the Group [Annual Financial Statement] for the year ended 31 March 2019" and "[r]estate the interim results for the 6 months ended 30 September 2019".
79. A restatement must take place at the next available opportunity.
80. The next available opportunity for Trustco to restate its financial statements was when it published its 2021 financial statements on 31 January 2022.
81. Trustco did not restate anything in those financial statements. Trustco added commentary in the notes to the financial statements about the JSE's decision and its intention to institute a review. The JSE's corrective action was clear: there must be a restatement. Trustco admits in paragraph 49 of its founding affidavit that "*there has not been a restatement*".



82. The chance for Trustco to restate its financial statements has now come and gone; the horse has bolted. It follows that there is nothing left to interdict. For this reason alone, Trustco's interim relief is incompetent.

Interim relief is incompetent because Trustco is in contempt of the Tribunal's decision

83. I am advised that the Supreme Court of Appeal has described an interim interdict as an "*extraordinary remedy within the discretion of the court.*" I am also advised that a court may decline to exercise its discretion in favour of a litigant who is in contempt of a court order.
84. The Tribunal dismissed Trustco's reconsideration application on 22 November 2021. Trustco is in contempt of the Tribunal's decision because it has not complied with the JSE's corrective action that the Tribunal endorsed. Trustco admits in paragraph 49 of its founding affidavit that "*there has not been a restatement*".
85. Trustco has shown a marked disregard for the Tribunal's authority and has, in the end, ignored its decision. Trustco's conduct amounts to contempt of the Tribunal. This Court should, with respect, not come to Trustco's aid.

Interim relief is inappropriate on the OUTA test

86. The JSE derives its power to suspend listings from the Listings Requirements, the Financial Markets Act, and the Financial Sector Regulation Act. It is a polycentric, statutory power that is entrusted to the JSE as the expert regulator of a financial market.
87. Trustco's relief asks this Court to temporarily restrain the JSE's exercise of a statutory power. With respect, interim relief would intrude onto the exclusive



terrain of the JSE as regulator of a financial market entrusted with statutory powers to protect the investing public and the proper functioning of the market. It would also intrude onto the exclusive terrain of the Tribunal which is the body created to deal with disputes about decisions made by the JSE, including the suspension of those decisions.

88. I am advised that the *OUTA* test thus applies, which means that Trustco must show that this is the clearest of cases for interim relief. Trustco must also show that interim relief does not cause undue harm to the separation of powers.
89. The separation of powers harm here is acute given the JSE's role as regulator and its statutory mandate to ensure the proper functioning of financial markets. Trustco is filibustering at every turn. It has ignored the JSE's decisions and directives, and it has ignored the Tribunal's decision. Interim relief would tie the JSE's and the Tribunal's hands and prevent them from exercising their discretionary statutory powers that it is given to protect the investing public. *OUTA* applies, and it rightly calls for pause.
90. Trustco does not even plead its case for interim relief within the confines of the *OUTA* test, let alone satisfy the test.

Trustco does not have a prima facie right

91. Trustco moors its *prima facie* right to its pending review. It describes this application as being "*sought on the basis that the foundation*" of the JSE's decision to suspend its listing "*is a decision which is presently the subject of a review*". I am advised that the premise of that statement is wrong in law: an



interim interdict cannot be based on, without more, the mere institution of a review.

92. Trustco argues that the “*validity and legality*” of the JSE’s decision to suspend its listing is “*wholly dependent on the validity and legality*” of the Tribunal’s decision and “*can only be enforced if the Tribunal’s [d]ecision is enforceable.*” Trustco argues that its review should be “*permitted to run its course before any sanction can be imposed.*”
93. The JSE denies that this reasoning is legally sound, and this will be dealt with in argument.
94. In any event, Trustco does not need interim relief to preserve its right to review any decision. Trustco has already launched a review. It does not allege that suspending its listing somehow imperils its review; even if the JSE suspends its listing on 11 March, Trustco’s review will still be live on 12 March.
95. I am advised that the *prima facie* right that Trustco must establish for interim relief is not merely a right to approach a court to review an administrative decision. Rather, Trustco must show a *prima facie* right that requires interim preservation. Trustco does not make that showing.
96. Nor does Trustco even allege that its review has prospects of success.
- 96.1 Trustco’s review targets only the Tribunal’s decision to dismiss Trustco’s reconsideration action. Trustco does not review the JSE’s decision that Trustco failed to comply with IFRS in respect of the loan issue and the property issue. The JSE’s decision must, therefore, be accepted as legally valid and binding.



- 96.2 Trustco describes its review as “*aimed at determining whether or not the Tribunal was correct*”. That should be the end of this application because, so I am advised, a review is not about whether an administrative decision is correct. Rather, it is about whether there are reviewable irregularities. Trustco confuses review and appeal, and for this reason alone, its review has no prospects of success because, on its own version, it applies the wrong standard of review.
- 96.3 Trustco’s founding affidavit says nothing about its review other than the fact that it has been launched. In particular, Trustco says nothing about its grounds of review, and it does not show that its review has any prospects of success.
- 96.4 I deny that section 236 of the Financial Sector Regulation Act has the extraordinary effect of suspending a decision of the JSE or the Tribunal by the mere launching of a review. This will be dealt with in argument.
97. For these reasons, the JSE denies that Trustco has a *prima facie* right to interim relief.

Trustco does not show that it will suffer irreparable harm

98. Trustco pleads little, if any, facts to support its conclusions about irreparable harm. It alleges a “*devastating consequence*” that it says “*requires no further elucidation.*” But “*further elucidation*” is exactly what an applicant in an urgent application is obliged to plead in its founding affidavit.

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99. The closest that Trustco comes to pleading facts to support its allegation of irreparable harm is in paragraph 38 of the founding affidavit. At worst, these allegations amount to commercial harm that is not irreparable. If Trustco does not obtain interim relief but is ultimately successful in its review, its shareholders would then be able to freely trade their shares. Trustco's success in the review would also cure any alleged reputational damage.

The balance of convenience weights against interim relief

100. On the other side of the balance, there would be irreparable harm to the market and to unsuspecting third parties who invest in Trustco shares if Trustco obtains interim relief but is ultimately unsuccessful in its review. There would also be irreparable harm to the rule of law and the JSE's ability to act as an effective regulator.
101. Trustco claims that the market is "*well aware*" of the JSE's decision that Trustco did not comply with IFRS in respect of the loan issue and the property issue, and "*well aware*" of the Tribunal's decision to dismiss Trustco's objection. Trustco points to "*a number of SENS announcements*" in this regard. Trustco also points to the small print in its 2021 annual financial statements.
102. None of that adequately protects unsuspecting investors who would have no reason to look out for SENS announcements about Trustco, and no reason to carefully parse the commentary to Trustco's financial statements. The only way to effectively protect investors, and to prevent them from suffering irreparable harm if Trustco's review ultimately fails but its shares remain freely tradable in the meantime, is to suspend Trustco's listing.



103. Trustco admits that it has not restated its financial statements. The commentary to its financial statements is inadequate and does not reasonably convey the nature and effect of Trustco's failure to comply with IFRS in respect of the loan issue and the property issue. Nor does the commentary comply with IAS 1.18 in IFRS, which states that "[a]n entity cannot rectify inappropriate accounting policies either by disclosure of the accounting policies used or by notes or explanatory material".
104. In any event, Trustco's commentary to its financial statements does not:
- 104.1 identify the specific line items that would increase or decrease as a result of the restatements;
 - 104.2 specify any tax or deferred tax consequences of the restatement;
 - 104.3 explain the unwinding or reversal of share transactions (including shares invalidly issued to Dr van Rooyen);
 - 104.4 quantify the impact of the restatement on earnings per share or headline earnings per share; or
 - 104.5 quantify the overall impact that the restatement would have on the financial statements.
105. In the circumstances, Trustco has left it to the reader of the financial statements to interpret and estimate the precise accounting effect of the restatements—an almost impossible task to conduct with the slightest degree of certainty as to the full financial effect of the restatements.



106. To further illustrate the misleading effect of Trustco's failure to restate its financial statements, I note the following which (in the absence of specific information described in paragraph 104 being made available) requires certain assumptions to be made and cannot reasonably be ascertained only from the commentary to Trustco's financial statements:

106.1 in respect of the 2019 annual financial statements, Trustco should have reported an overall loss, in contrast to the profit that it reported, and a loss per share (in contrast to the positive earnings per share) should have been reported;

106.2 in respect of the 2020 annual financial statements, the reported loss for the period should have been reported as more than double what was actually reported, and the loss per share should have been reported as more than 4 times more than what was actually reported; and

106.3 in respect of the 2021 annual financial statements, the reported loss per share should have been reported as almost double what was actually reported.

107. I also point out that the necessary implication of the JSE's corrective action is that the issuing of some of Dr van Rooyen's shares must be reversed. If Trustco's listing is not suspended, those shares, which were never validly issued, may be sold on the market to unsuspecting investors.

108. There is also irreparable harm to market regulation and the rule of law. Trustco has, at every turn, ignored and disregarded the authority of the JSE and the



authority of the Financial Services Tribunal. The message that its conduct sends to the market is that listed companies can, through brute litigation trench-warfare, thwart their regulator and the Tribunal, and continue offering their shares to the market despite non-compliance with IFRS.

109. For these reasons, I deny that the balance of convenience favours interim relief.

Trustco has an alternative remedy

110. Trustco has an obvious alternative remedy: its suspension application before the Financial Services Tribunal. Trustco alleges that there is “*no guarantee*” that its suspension application “*will be complete before the JSE’s deadline.*” Nor is there, with respect, any “*guarantee*” that this Court would decide this application before 11 March 2022.

111. But we do know that the Tribunal is seized with Trustco’s suspension application, and an expedited timetable was put in place. We also know, despite Trustco’s failure to disclose this fact in its founding affidavit, that the Tribunal’s secretariat indicated that Trustco’s suspension application “*should be finalised before 11 March 2022 provided the timeline set out in the Tribunal rules are adhered to.*”

PARAGRAPH-BY-PARAGRAPH RESPONSE TO THE FOUNDING AFFIDAVIT

112. In the paragraphs that follow, I respond to each paragraph of the founding affidavit. In doing so, I will show that Trustco’s application for interim relief is bad on its merits, quite apart from the preliminary points that I raised in the previous sections.

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Paragraphs 1 to 7

113. I deny that all the allegations in the founding affidavit are true. I admit the other allegations in these paragraphs.
114. The JSE is a licensed exchange under the Financial Markets Act. Section 11(1)(b) of the Financial Markets Act obliges the JSE to adopt listings requirements which impose obligations on issues of listed securities like Trustco.
115. The JSE adopted its Listings Requirements pursuant to this statutory scheme, and enforcing compliance with the Listings Requirements is the JSE's primary mechanism to regulate its market in the public interest. The Listings Requirements are available on the JSE's website at: <https://www.jse.co.za/sites/default/files/media/documents/2019-04/JSE%20Listings%20Requirements.pdf>.
116. Compliance with the Listings Requirements ensures the integrity of the market and prevents listed companies simply following their own views (or their auditors' views). These obligations are not voluntary. They must be timeously complied with. Where there is non-compliance, the JSE must act. It is statutorily obliged to do so under section 10 of the Financial Markets Act. A failure to ensure timeous compliance has the real potential to cause very serious harm to participants in the market. Any number of the recent large corporate accounting scandals demonstrates the scale of the potential harm. The recent collapse of the Steinhoff group is just one of example.



117. Section 8 of the Listings Requirements prescribes how listed companies must report their financial information. Paragraph 8.62 and 8.65 require listed companies to comply with IFRS. The preparation, publication, and dissemination of accurate financial statements is of critical importance in ensuring a fair, efficient, and transparent market. Paragraph 1.6 expressly envisages suspension of a listed company's listing if the company "*has failed to comply with the Listings Requirements and it is in the public interest to do so.*"

Paragraphs 8 to 14

118. I deny that Trustco has made out a case for urgency, which I have already dealt with elsewhere in this affidavit.
119. I also deny that it is competent to base an application for an interim interdict on nothing else than the fact that "*the foundation*" of the decision sought to be interdict "*is ... the subject of a review*".
120. In paragraph 12 of the founding affidavit, Trustco describes this application as being in urgent court "*[o]ut of caution*". Trustco impermissibly seeks this Court's urgent intervention as a contingency and just in case the Financial Services Tribunal does not decide Trustco's suspension application by 11 March 2022. I am advised that this is impermissible.
121. Regrettably, Trustco does not disclose that the Tribunal's secretariat indicated in the email chain attached to the founding affidavit that the Tribunal's ruling on Trustco's suspension application "*should be finalised before 11 March 2022*

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provided the timeline set out in the Tribunal rules are adhered to." Trustco does not allege any reason to doubt the Tribunal's diligence and expedience.

122. Moreover, as I explained elsewhere in this affidavit, the Trustco's pending suspension application before the Tribunal means that this Court's intervention is not necessary; the suspension application offers Trustco an adequate opportunity to obtain substantial redress.

123. I also deny that Trustco "*extended the JSE as much time as possible to oppose this application and engage with the issues raised in it.*" I dealt with Trustco's self-created urgency elsewhere in this affidavit.

Paragraph 15

124. I admit the allegations in this paragraph.

Paragraph 16

125. I admit the allegations in this paragraph.

126. I point out, however, that the JSE does not merely "*contend*" that Trustco failed to comply with the Listings Requirements and IFRS. The JSE made a decision to that effect, after considering the expert input from the FRIP. The JSE's decision is valid and binding unless and until it is set aside. Trustco's pending review is not against the JSE's decision.

127. I also note that Trustco admits, in paragraph 49 of the founding affidavit, that it has not, contrary to the JSE's and the Tribunal's decisions and corrective action, restated its financial statements. Trustco has, in other words, intentionally and knowingly disregarded the JSE's and the Tribunal's decision.



Paragraphs 17 to 19

128. Once again, Trustco gets the standard of review wrong. It claims that the “*both the JSE and the Tribunal are incorrect.*” A review is not about the correctness of a decision. The JSE denies that Trustco’s review has any prospects of success; Trustco does not even bother to plead its grounds of review.

Paragraphs 20 to 27

129. I admit that Trustco launched its review. I deny, however, that the mere launching of a review has any legal effect.

130. The review is against the Tribunal’s decision to dismiss its reconsideration application; the review is not against the JSE’s decision that Trustco did not comply with IFRS in respect of the loan issue and the property issue. The mere fact that Trustco has launched its review does not mean that the effect of any decision is suspended.

131. I deny that the JSE gave Trustco’s objection “*short shrift*”. The JSE rationally applied its mind to all relevant considerations, including Trustco’s grounds of objection, as appears from the relevant correspondence.

132. I also deny Trustco’s pejorative description of the JSE’s deadline of 11 March 2022 as an “*ultimatum*”. The JSE is entitled to suspend Trustco’s listing, and the deadline of 11 March 2022 was set after balancing competing interests.

133. I note that in paragraph 27 of the founding affidavit, Trustco mentions that the Tribunal set a timetable for the filing of pleadings in Trustco’s suspension application. Regrettably, Trustco did not disclose in this paragraph that the Tribunal’s secretariat indicated that Trustco’s suspension application “*should*



be finalised before 11 March 2022 provided the timeline set out in the Tribunal rules are adhered to."

Paragraphs 28 to 29

134. I deny the allegations in these paragraphs. The Tribunal's secretariat indicated that Trustco's suspension application "*should be finalised before 11 March 2022 provided the timeline set out in the Tribunal rules are adhered to.*"

135. The mere fact that Trustco has launched its review has no legal effect on the JSE's entitlement to exercise its statutory power and suspend Trustco's listing.

Paragraphs 30 to 35

136. I have dealt with Trustco's lack of a *prima facie* right elsewhere in this affidavit, including Trustco's failure to comply with the *OUTA* test.

137. I note that Trustco describes its review as "*aimed at determining whether or not the Tribunal was correct*". On this basis alone, Trustco's review has no prospects of success because a review is not about the correctness of the decision being reviewed.



138. I deny that the "*validity and legality*" of the JSE's decision to suspend Trustco's listing "*is wholly dependent on the validity and legality of the Tribunal's [d]ecision and can only be enforced if the Tribunal's [d]ecision is enforceable.*" The Tribunal's decision (and the JSE's decision that Trustco did not comply with IFRS in respect of the loan issue and the property issue) is valid and binding unless and until it is set aside. The mere fact that Trustco has instituted review proceedings is legally irrelevant.

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139. I also deny Trustco's interpretation of section 236 of the Financial Sector Regulation Act to the contrary, which will be dealt with in argument.
140. Trustco does not explain how the JSE "*seeks to denude*" Trustco of any rights, including its right to fair and just administrative action. Trustco does not need interim relief to preserve its right to review any decision. Trustco's hyperbolic soundbite that the JSE is attempting to "*mete out sanction as it sees fit as judge, jury and executioner*" makes no sense given that the JSE has followed the process set out in the Listings Requirements, the Financial Markets Act, and the Financial Sector Regulation Act.

Paragraphs 36 to 40

141. I deny that Trustco will suffer irreparable harm without interim relief. I also deny that this Court's intervention is necessary in light of the Trustco's pending suspension application before the Tribunal.
142. The JSE has a statutory obligation to uphold the integrity of the market as a whole. By not suspending Trustco's listing, there is reputational harm to the entire market, and the knock-on consequences are on a larger scale than any market sentiment against Trustco. If anything, the ongoing harm of allowing trading in Trustco shares despite Trustco's non-compliance with IFRS risks even more irreparable harm, including the need to reverse transactions with, and possibly even between, unsuspecting third parties.
143. If anything, Trustco's allegations in these paragraphs count against interim relief.



143.1 Trustco is concerned that the “*market is extremely sensitive when it comes to the transparency with which listed entities conducts business.*” The irony is lost on Trustco: the JSE decided that Trustco did not comply with IFRS precisely because its financial statements did not reflect the substance of the loan issue and the property issue. Plus, Trustco’s failure to restate its financial statements irreparably harms transparency in the market.

143.2 It is galling for Trustco to point to the commercial interests of its shareholders when its majority shareholder, Dr van Rooyen, appears to have benefited handsomely, though his earn-out mechanism, from Trustco’s non-compliant reporting of the loan issue.

Paragraphs 41 to 51

144. The balance of convenience counts against interim relief. Trustco does not mention, let alone refute, the irreparable harm to unsuspecting prospective shareholders who may purchase Trustco shares between now and the final determination of Trustco’s review. Interim relief would also cause irreparable to the rule of law, the Tribunal’s authority, and the separation of powers, as I explained earlier in this affidavit.

145. I note that in paragraph 49 of the founding affidavit, Trustco admits that there has been no restatement of its financial statements. Trustco should not be allowed to ignore and disregard the decisions of the JSE and the Tribunal with impunity.



146. I deny that the market is "*well aware*" of the relevant issues. While some who have a particular interest in Trustco may have read the relevant SENS announcements, most of the investing public, including non-institutional investors, would have had no reason to do so. Suspending Trustco's listing is necessary to protect those investors and guard against the irreparable harm to them if Trustco shares continue to trade but its review ultimately fails.
147. The fact that there is no allegation of fraud is irrelevant. The JSE decided, after considering the expert views of the FRIP, that Trustco's financial statements did not comply with IFRS in respect of the loan issue and the property issue. The JSE's decision was also supported by an independent expert, Warren Maroun, a professor of accountancy at Wits, and endorsed by the Tribunal.


Paragraphs 52 to 53

148. Again, irony is lost on Trustco: it complains (incorrectly) that "*the JSE*" somehow "*ignores the rights conferred on the JSE under both the Act and the Constitution.*" Yet it is *Trustco* that has ignored and disregarded the decisions of the JSE and the Tribunal.
149. Trustco has an obvious alternative remedy: its suspension application before the Tribunal. Trustco alleges that there is "*no guarantee*" that its suspension application "*will be complete before the JSE's deadline.*" Nor is there, with respect, any "*guarantee*" that this Court would decide this application before 11 March 2022. The Tribunal's secretariat has indicated that a ruling on Trustco's suspension application "*should be finalized before 11 March 2022 provided the timelines set out in the Tribunal rules are adhered to.*" Trustco alleges no reason to doubt the Tribunal's diligence.



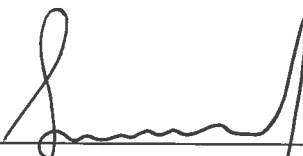
CONCLUSION

150. This Court should either strike this application or dismiss it. Costs should follow.



ANDRE VISSER
Director: Issuer Regulation

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at Sandton on this the 15th day of March 2022, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.



COMMISSIONER OF OATHS

Full names:

SIMON DELMONT
COMMISSIONER OF OATHS

Address:

PRACTISING ATTORNEY R.S.A.
20th Floor, Office Tower, Sandton City
Fifth Street, Sandton, 2196

Capacity:

"AA1"



TRUSTCO GROUP HOLDINGS LIMITED

Incorporated in the Republic of Namibia

(Registration number 2003/058)

Registered as an external company in South Africa

(External registration number 2009/002634/10)

JSE share code: TTO

NSX share code: TUC

OTCQX share code: TSCHY

ISIN Number: NA000A0RF067

("Trustco" or "the Group")

NON-BINDING ADVISORY VOTE

Trustco Shareholders (Shareholders) are referred to the announcements released on SENS on 23 November 2021 in terms whereof Shareholders were advised of the dismissal of Trustco's application for reconsideration by the Financial Services Tribunal in South Africa.

Shareholders are reminded that, as per the Companies Act of Namibia, Act 28 of 2004 and the principles of the King IV Report, the Trustco Board of Directors (the Board) is responsible and accountable to Shareholders for the preparation and presentation of financial statements and to ensure that the financial statement are prepared in compliance with International Financial Reporting Standards (IFRS). The Board cannot abdicate this responsibility, especially when the outcome would contradict the Group's appointed professional advisors.

Trustco's professional advisors confirmed that the dismissal of its application for reconsideration puts the Board in an untenable position whereby the Board is instructed by the JSE, which is only one of the three stock exchanges Trustco is listed on, to report in a manner that would not be in compliance with IFRS. The JSE directive contradicts both the Board's considered opinion and the advice of its professional advisors. Trustco reserves its rights herein.

Shareholders should further note that the unwarranted interference of the JSE is an attempt to usurp the responsibilities and fiduciary duties of the Board without any accountability towards Shareholders. This undermines the independence, accountability and integrity of the Board.

Trustco's Board is engaging stakeholders and requests Shareholders to participate in non-binding advisory votes on key matters as set out below. All Shareholders, excluding the majority shareholder and his associates, are hereby invited to cast their vote. Although Shareholders have previously approved the affected transactions, as well as the audited annual financial statements and disclosures, the Board requests current Shareholders to reaffirm their position on these transactions.

This non-binding advisory vote enables Shareholders to express their views and will not have any legal consequences for those Shareholders that now cast their vote. The Board will however consider the outcome of the votes to assess Trustco's future options.

The process will be as follows:

1. Shareholders are invited to attend an interactive online session with the independent non-executive chairman of the Board, the Audit and Risk Committee Chairman and the Group Financial Director to discuss the key matters set out below.
2. Shareholders who want to attend the online session must provide the company secretary with their details (Full name, name under which shares are registered, number of shares and email address) by sending an email to komada@tgh.na before 10h00 Central African Time (08h00 UTC) on the 6th of December 2021.
3. The online session will be held on the 6th of December 2021 at 12h00 Central African Time (10h00 UTC).
4. Shareholders are requested to return the voting tabulation by no later than Wednesday the 8th of December 2021 at 12h00 Central African Time (10h00 UTC) to komada@tgh.na. The form can also be downloaded from or completed online at Trustco's website at www.tgh.na



Name of shareholder : _____
 Number of shares held : _____
 Email and contact details : _____

No	Key matter	For Include number of shares	Against Include number of shares	Abstain Include number of shares
1.1	To endorse and confirm the accounting treatment of the NAD 546 million loan forgiveness transaction by the majority shareholder, Next Capital Limited, as set out in the audited financial statements (Note 26, Page 65 of the March 2019 Annual Financial Statements).			
1.2	To endorse and confirm the accounting treatment of the NAD 1 billion loan forgiveness transaction by the majority shareholder, Next Capital Limited, as set out in the audited financial statements (Note 27, Page 153 of the September 2020 Financial Statements).			
1.3	To endorse the accounting treatment of the property reclassification as set out in the audited financial statements (Note 8, Page 49 of the March 2019 Annual Financial Statements)			
2.1	To confirm and endorse the auditors' opinions as contained in the audited financial statements for the financial year ending March 2019.			
2.2	To confirm and endorse the auditors' opinions as contained in the audited financial statements for the financial period ending September 2020.			
3	To confirm and agree that the Board followed due process and remains best placed to do so in the future, in recommending the financial statements to the shareholders for approval.			
4.1	To endorse that the loan write-offs set out in 1.1 and 1.2 above triggered a contractual earn-out clause in terms of the amended Huso Transaction as approved by Shareholders on 13 June 2017.			

4.2	To endorse that the share issue at NAD 4.69 was in line with the amended Huso Transaction as previously approved by Shareholders on 13 June 2017.			
4.3	To endorse the amended Huso Transaction as approved by Shareholders on 13 June 2017.			
4.4	To endorse the Related Party Loan Transaction (One Billion Namibia Dollar Loan) as approved by Shareholders on 22 January 2019.			
4.5	To confirm that the Board acted in the best interest of minority Shareholders by accepting the total of NAD1.546 billion loan write-offs by the majority shareholder to Trustco.			
5	To confirm that the information and disclosures (including pro forma financial information) presented to Shareholders in the Huso circular, the amended Huso circular and the audited financial statements were adequate to approve the Huso Transaction, the amended Huso Transaction and the Related Party Loan Transaction.			
6.1	The Board is considering its options regarding the benefits of Trustco's current listings. To move a listing to a more beneficial exchange, a majority vote from minority Shareholders is required. Should Trustco delist from the JSE, Trustco would also automatically delist from the NSX in Namibia and the OTCQX in the United States of America. To support the Board's position that Trustco's current listings are not in the best interest of all Shareholders.			
6.2	To support the Board's position for Trustco to list on a business-friendly international exchange as soon as practical.			
7.1	To elect to remain as a Shareholder in an unlisted environment until Trustco relists on an international stock exchange within a period of not more than 36 (thirty-six) months from the date of delisting from the JSE ("Delisting Date")			

	Should Trustco fail to relist on an international exchange within 36 (thirty-six) months from the Delisting Date, Shareholders may give notice of their intention to sell their shares to Trustco at a price of 10% above the average VWAP price of the TTO Share between the 1 st of January 2021 to the 30 th of November 2021 plus 8.5% compound interest from the Delisting Date to the end of the 36 (thirty-six) month period.			
7.2	To elect not to remain a Shareholder after delisting, with Trustco acquiring the Shareholder's Trustco shares ("TTO Shares") within 36 (thirty-six) months from the Delisting Date at a price of 10% above the average VWAP price of the TTO Share between the 1 st of January 2021 to the 30 th of November 2021.			
8	As a minority Shareholder, to consent to a reduced timeframe for the above delisting transactions when a formal vote is required.			
9	To agree that any announced transactions currently in process be implemented subsequent to the potential delisting.			
10	To hold the responsible parties, jointly and severally, accountable for shareholder value destruction during the process.			
11	Shareholders are invited to provide any relevant comments or information for the attention of the board:			

The outcome of the non-binding advisory votes will be announced on SENS.

Windhoek, Namibia,

1 December 2021

Komada Holdings (Pty) Ltd

Company Secretary and Investor Relations Services to Trustco Group Holdings Limited

JSE Sponsor

Vunani Corporate Finance – Johannesburg

NSX Sponsor

Simonis Storm Securities Proprietary Limited – Windhoek

OTCQX Sponsor

J.P Galda & Co – New York

A handwritten signature in black ink, consisting of stylized initials that appear to be 'LH'.

"AA2"



3 December 2021
111246/19-4/SC

Mr W Geysler
The Audit Committee Chairperson
Trustco Group Holdings Limited

Johannesburg
Stock Exchange

One Exchange Square
Gwen Lane
Sandown, South Africa
Private Bag X991174
Sandton 2146

Tel: +27 11 520 7000
Fax: +27 11 520 8584

www.jse.co.za

Email: gmd@epic-holdings.com

Dear Sir

PROACTIVE MONITORING OF ANNUAL FINANCIAL STATEMENTS ("AFS")

1. We refer to our letter dated 26 November 2021. Trustco has failed to comply with important provisions of the JSE's Listings Requirements and the JSE's decision in this regard has been confirmed by the Financial Service Tribunal. It is of obvious and serious concern that Trustco's published financial information was incorrect, misleading and did not comply with important provisions of the Listings Requirements and IFRS and that this untenable state situation has been continuing for a period of more than two years.
2. The serious concerns set out above are further exacerbated by Trustco's failure and refusal to take the necessary and appropriate steps to ensure that it complies with the Listings Requirements and the decisions of the JSE and the Financial Services Tribunal. It is readily apparent from the contents of Trustco's announcement of the 1st of December 2021 that it has no intention of complying with the Listings Requirements and the decisions of the JSE and the Financial Services Tribunal. It is indeed startling that Trustco has attempted to somehow make compliance with the Listings Requirements and the JSE and the Financial Services Tribunal's decisions dependent on, or subject to shareholders' approval.
3. Neither Trustco, its directors, its shareholders and/or its advisors are empowered to endorse or approve a course of action that is contrary to and in conflict with the provisions of the Listings Requirements and the decisions of the JSE and the Financial Services Tribunal.

Executive Directors: Dr L Fourie (Group CEO), A Takoordeen (CFO)

Non-Executive Directors: N Nyembezi (Chairman), ZBM Bassa, MS Cleary, VN Fakude, Dr SP Kana, FN Khanyile, IM Kirk, BJ Kruger, Dr MA Matookane, P Nhleko

Group Company Secretary: GA Brookes

JSE Limited Reg No: 2005/022939/06

Member of the World Federation of Exchanges

10/2/2021

A handwritten signature in black ink, appearing to be 'R B'.

4. The JSE's licensed duties and functions are set out in peremptory terms in section 10 of the Financial Markets Act. The JSE is obliged to enforce its Listings Requirements and to ensure that issuers and their directors comply, in all aspects with these Requirements. Conversely, issuers listed on the JSE and their directors are obliged to provide the JSE with an unequivocal undertaking that they will comply with the Listings Requirements (see 1.1 of Schedule 1).

5. In these circumstances, the JSE is considering the suspension of the listing of Trustco's securities due to its failure to comply with important provisions of the Listings Requirements and its refusal to take the necessary steps to ensure that it complies, in all aspects with the Listings Requirements and the decisions of the JSE and the Financial Services Tribunal. The JSE is also of the view that the proposed suspension would be in the public interest and will further the objects of the Financial Markets Act. Trustco's failure to comply with important provisions of the Listings Requirements and its refusal to take the necessary and appropriate corrective action are contrary to the objectives of the Financial Markets Act, destructive of their very purpose and can never said to be in the public interest.

6. In terms of paragraph 1.7 of the Listings Requirements, we hereby give Trustco the opportunity to make written representations to the JSE as to why such a suspension should not be affected.

7. We await your response on or before 10 December 2021.

Yours faithfully



**A F VISSER: DIRECTOR
ISSUER REGULATION**



"A#3"

9 December 2021

By Email: andrev@jse.co.za

Mr A F Visser
Issuer Regulation
Johannesburg Stock Exchange

NORTON ROSE FULBRIGHT

Norton Rose Fulbright South Africa Inc
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PO Box 784903 Sandton 2146
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nortonrosefulbright.com

Direct line
+27 11 685 8501

Email
john.bell@nortonrosefulbright.com

Your reference **Our reference**
111246/19-4/SC TGH1/ Mr J Bell

Dear Sirs

Trustco Group Holdings Ltd

1 As you are aware, we represent Trustco Group Holdings Ltd ("**Trustco**" or "**our client**").

Response Time

- 2 We refer to your letter dated 3 December 2021, sent to our client's audit committee chairman, Mr Geyser, but not to any other representatives of our client. Our instructions are that due to the letter having been password protected, a readable copy was only provided to our client on 7 December 2021.
- 3 Given the complexity and potential impact of the issues involved and the fact that the letter was only received on 7 December 2021, it is unfortunately impossible for our client to respond to your letter at such short notice and on or before 10 December 2021. Even if our client received the letter on 3 December 2021 we would have had to ask for an extension of at least 10 days after we received the additional information requested below.

Implementation of the Tribunal' decision

- 4 Despite the assertion in your letter of 3 December 2021 that "*Trustco has no intention of complying with the listing requirements and the decision of the JSE and the Financial Tribunal*", our client assures you that no such decision was taken by its Board of Directors.
- 5 It appears that the JSE has lost sight of the fact that a restatement of financial statements of this magnitude and complexity in relation to matters dating back some three years requires significant consideration and time both by our client and its advisors. Our client and its advisors will need to obtain independent advice on the issues, and how to treat and practically implement the Tribunal's decision. The completion of this exercise will be further delayed given the time of year and the upcoming festive season.
- 6 Our client, and its advisors, have every right to give proper consideration the content of the decision and its practical impact. They should, in order to ensure accurate reporting to the market, be afforded sufficient time to attend to this. Furthermore, nothing precludes our client in the circumstances from raising the issues with, and taking guidance from, its shareholders. You would in this regard have noted the SENS announcement of 8 December 2021 which provides the prodigiously positive outcome of the matters voted on by the minority shareholders and which our client consider in future decisions.

13518976_1

Norton Rose Fulbright South Africa Inc (Reg No 1984/00338521) Directors: APM Robinson (Chairman) M van der Westhuizen (Chief Executive Officer) K Anstie MH Alexander MS Aze SH Barnet JW Bell HI Bisset BE Botha GG Bouwer N Bowman PA Bracher DR Brewer AJ Chappel M Charrood SL Chemaly MD Coesse C Coates MG Dale V David BM Denny D Dine MC Harwell R Hendrick CR Horless DS Kooze AV Karamalavi SJ Kennedy Good SS Khoza JM Krom S Lani RE F Jaka PE Lamp S Makara EJ McCaul CJ Merrington JE Madane GA Nott UN Odoye B Perret RP Petersen CC Pity DR Pity CJ Pretorius GM Rademeyer L Rach D Reddy V Reddy AK Strachan I Swart DS Tatham HJ van Rensburg C van Vuuren AP Vos M Wagener JJ Whyte AP Williams LE Williams C Woolley

Consultant: N Botha AE Buckley PM Chrens AGS Iron MJ Hari RJ How GCB Karle WP le Roux E Lamprecht P Naude L Oberholzer

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- 7 Our client's right to seek guidance from its shareholders, and the alleged failure to take timeous steps to comply with the Tribunal's decision cannot be construed, as the JSE seems to do, as constituting some sort of general and blanket attempt to "make compliance with the Listings Requirements and the JSE and the Financial Services Tribunal's decision dependent on, or subject to shareholders' approval."
- 8 A further issue of significant concern for our client and its Board of Directors is the impact of the JSE's so called Amended Corrective Action on the liability of Trustco's Board of Directors. The Amended Corrective Action requires the implementation of changes to financial statements that the Board of Directors must take legal responsibility for. However, the board is required by the JSE to do so in the absence of any consensual or contractual basis. In short, the JSE requires the Trustco Board to authorise a financial entry which are not supported by the true facts. Trustco's Board of Directors is therefore exposed to claims based on what it considers to be incorrect and false financial statements, for which the JSE (and its Board of Directors) have provided no indemnity. The JSE is invited by return to confirm whether it and its Board of Directors will provide such an indemnity to our client and its Board of Directors, if our client agrees or is coerced under pain of penalty to agree to such actions.

New Decision and Review

- 9 It is apparent from the letter that the JSE has now made a decision that our client is not complying with the JSE Listing Requirements ("**the Non-Compliance Decision**"), albeit that there is no indication in your letter which particular JSE Listings Requirement have purportedly not been complied with.
- 10 We can only assume, that the Non-Compliance Decision is based on nothing more than the fact that our client has thus far not taken steps to comply with the Financial Services Tribunal's ("**the Tribunal**") decision of 23 November 2021.
- 11 In addition to the reasons for the delay as set out above, and from the analysis conducted to date, our client, and its advisors are of the view that the Tribunal's decision is incorrect and in fact reviewable.
- 12 You will therefore no doubt be cognisant of the fact that:
- 12.1 our client has 180 days to review the Tribunal's decision in terms of the *Promotion of Administrative Justice Act, 2000* ("**PAJA**") or any applicable law; and
 - 12.2 the Tribunal's decision can only be enforced in accordance with section 236 of the *Financial Sector Regulation Act, 2017* ("**FSRA**") which process in turn can only ensue following the lapse of the above time-period if no review application has been launched.
- 13 We hereby confirm our instructions to bring the necessary review application within the time-frame afforded under PAJA.

Objections to the Non-Compliance Decision

- 14 The Non-Compliance Decision coupled with the threat of suspending our client's listing on unilaterally imposed timelines, is:
- 14.1 firstly, premature as it:
 - (1) fails to take into account the reasons for the delay in implementation as set out above;
 - (2) fails to take into account our client's right to review the Tribunal's decision; and
 - (3) seeks to impose a sanction without our client being given sufficient information and a reasonable opportunity to address the Non-Compliance Decision; and
 - 14.2 secondly, nothing short of an attempt by the JSE to coerce our client into compliance with a decision that is based on an unlawful and reviewable decision by the Tribunal; and



- 14.3 thirdly, ill-founded in light of the provisions and purpose of section 236 of the FSRA in terms of which there is no obligation on our client at this juncture to act on the JSE's initial decision and the Non-Compliance Decision.
- 15 In addition to the above, and as the JSE itself points out, this matter has, through no fault of our client, been dragging on for more than two years. In the interim and prior to our client's reconsideration application, the JSE saw fit to publish a SENS informing the market of its initial decision which has now been followed by a further SENS informing the market of the Tribunal's decision. This coupled with Trustco's own SENS announcement has made the market well aware of the JSE, FRIP and Tribunal's decisions. Seeking to suspend our client's listing in the current circumstances, and whilst our client is entitled to exercise its rights under section 236 of the FSRA:
- 15.1 is severely prejudicial to our client, and will merely serve as a punishment for perceived non-compliance with some unidentified spirit - called substance - of IFRS. In fact, during the hearing before the Tribunal, it was conceded by the JSE's counsel that Trustco complied with IFRS, but, so it was contended, Trustco should have rather complied with IFRS's substance and not its form. In this regard:
- (1) You are unfortunately incorrect by asserting that the Tribunal confirmed the JSE's decision. The Tribunal never made such a finding.
 - (2) The Tribunal also did not find that the JSE was correct. The Tribunal simply applied the due deference principle in a clinical manner. In doing so, it caused a vitiating irregularity to occur. This aspect raises fundamental constitutional and legality issues which will be advanced in Trustco's review application. In short, the application of the due deference rule in circumstances where no deference - but only indifference - is shown to the business judgment of the Trustco Board of Directors, leaves the law at large to punish (while materially threatening the personal security) of directors who are simply doing their honest best, and while acting on the advice of JSE approved experts.
- 15.2 will cause, by result or design, significant damage to our client and its shareholders contrary to the intended purpose of both the *Financial Markets Act, 2012* and Listings Requirements; and
- 15.3 is, contrary to the JSE's unsubstantiated and disconcerting allegation, not in the public interest at all, which position is amplified by the overwhelmingly manner in which minority shareholders have voted per the SENS announcement of 8 December 2021.

Objection and Undertakings

- 16 In the circumstances, and for the reasons above as well as the fact that the JSE has not articulated which JSE Listings Requirement has purported been breached or provided any factual or legal basis to contend that a suspension will be in the public interest, our client:
- 16.1 objects to the Non-Compliance Decision in terms of Listing Requirement 1.4 – subject to the right to supplement its reasons upon being provided with the further information requested below;
- 16.2 requires your unequivocal undertaking by no later than 17h00 on 13 December 2021 that our client's listing will not be suspended or any other sanction imposed on our client in relation to the alleged failure to adhere to the Tribunal's decision pending:
- (1) you providing our client with the detailed information requested below; and
 - (2) you providing our client a reasonable time to take advice and respond to your letter of 3 December 2021 and supplement the basis for its objection under Listing Requirement 1.4; and/or
 - (3) the outcome of the above objection process under Listing Requirement 1.4; and
 - (4) further written reasons in terms of Listing Requirement 1.7 in respect of any decision to suspend (which would follow from the objection process above and a further objection under Listing Requirement 1.4 to any such decision); and



- (5) the outcome of an application for reconsideration to the Financial Services Tribunal of the above two decisions; and/or
 - (6) the final determination of the review application.
- 17 If you are not prepared to give the undertakings sought then we hold instructions to approach the High Court on an urgent basis to suspend the Non-Compliance and/or Suspension Decision pending either the review or a reconsideration application and suspension application to the Financial Services Tribunal. Further, in the event that you are not prepared to give the undertakings sought, please advise by the above date (17h00 on 13 December 2021) when the JSE will seek to suspend the listing.

Information required for Response

- 18 For purposes of providing an answer to your letter of 3 December 2021, supplementing Trustco's objection grounds and in order to take a proper decision as to the implementation of the "Amended Corrective Action", we hold instructions to record the following:
- 18.1 In your letter 26 November 2021 you refer to the "Amended Corrective Action" and what appears to be a compulsory "restatement".
 - 18.2 In your letter of 3 December 2021, you also say that the "JSE is considering the suspension of the listing of Trustco securities".
- 19 Please provide us with:
- 19.1 the exact reference to the source of the JSE's powers, empowering the JSE to order Trustco to amend or restate its financial statements which have been approved by the Trustco Board of Directors on advice of JSE approved expert, and thereafter approved by the shareholders.
 - 19.2 the resolution(s) of the JSE Board of Directors, or the resolution(s) delegating such powers, and then of course, the resolution(s) of that body under clause 12.13.17 of the JSE's memorandum of incorporation to impose the "Amended Corrective Action";
 - 19.3 the resolution(s) of the JSE Board of Directors, or the resolution(s) delegating such power, and then of course the resolution(s) of that body under clause 12.13.17 of the JSE's memorandum of incorporation in terms of which a decision was made:
 - (1) to consider the suspension of the listing of the Trustco securities;
 - (2) finding that the "JSE is also of the view that the suspension would be in the public interest";
 - (3) finding that "Trustco's failure to comply with the important provisions of the Listing Requirements and its refusal to take the necessary and appropriate action contrary to the objectives of the Financial Markets Act, is destructive of their very purpose" and therefore it can "never be said to be in the public interest" not to suspend the Trustco securities; and
 - (4) determining that Trustco published financial information which was "misleading".
- 20 Under the circumstances, you will appreciate that our client will only be in a position to issue and release its Annual Financial Statements for the year ended 2021, after it received the requested information from the JSE. Once the information is received our client will need to discuss and consider the information in conjunction with its external advisors. Due to the magnitude and scale of information that will need to be considered and evaluated our client foresees that it will not be in position to release its Annual Financial Statement for the year ended 2021 by end of December 2021. Our client therefore request a further undertaking from the JSE, that it will not thread to suspend the trading of our client's shares until such time that the information a requested by our client has been provided and our client had a reasonable time to consider and evaluate its position with its external advisors.
- 21 Lastly, and with due respect, we hold instructions to point out that our client assumes that the same body which came to the firm conclusions (as asserted in your letter of 3 December 2021 to be the JSE itself), will not take any future decisions in respect of any possible suspension of Trustco securities.



9 December 2021

NORTON ROSE FULBRIGHT

This must be so after a decision was taken that the proposed suspension "*would be in the public interest*" and that "*it can never be said to be in the public interest*" not to suspend the Trustco securities.

- 22 The firm conclusions referred to above have been reached and are clearly cast in stone. With respect, you will no doubt agree, that it will serve absolutely no purpose for Trustco to make submissions to a body with such firm and unalterable convictions. This is exacerbated by the fact that your letter of 3 December 2021, firmly asserts and concludes that Trustco's published financial information "*was misleading*". The latter issue is of serious concern to our clients, as the JSE has never before made such an allegation, let alone come to such a firm conclusion. This, with respect, rather unfortunate conviction of Trustco's board members serves as an absolute bar for future participation in any process concerning Trustco on the issues under discussion.
- 23 Our failure to have dealt with each and every allegation in your letter under reply should not be interpreted as an admission thereof and we reserve the right to address it in the appropriate forum and at the appropriate time.
- 24 All our client's other rights remain strictly reserved.

Yours faithfully

 pp

John Bell
Director
Norton Rose Fulbright South Africa Inc



"AA4"

14 December 2021

NORTON ROSE FULBRIGHT

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Your reference **Our reference**
111246/19-4/SC TGH1/J Bell

AM de Bruyn
General Manager: Issuer Regulation
JSE Limited
One Exchange Square
Gwen Lane
Sandown

Dear Madam

Trustco Group Holdings Limited ("Trustco"): Suspension of listing of securities

1. We refer to the JSE's letter of 13 December 2021.
2. We do not intend in this correspondence to address the allegations in your letter under reply and will do so separately through the objection process in due course. Please note that all future correspondence on this matter is to be directed to our offices.
3. We have noted your failure to provide us with the information sought in our letter of 9 December 2021.
4. Unless we receive the resolutions and minutes of the following meetings on or before 15 December 2021, we shall accept (even if the JSE disputes Trustco's entitlement thereto while simultaneously not providing the requested documents) that no duly constituted meeting was held and no proper resolution is in place for, at least, the following purported decisions:
 - 4.1. the "decision" referred to by you as the "Amended Corrective Action";
 - 4.2. the "decision" as referred to in paragraph 19.3 of our letter of 9 December 2021; and
 - 4.3. the "suspension decision" as reflected in your letter dated 13 December 2021.
5. The JSE has held out, also to the public at large, that the above decisions have been properly taken at duly constituted meetings. The JSE should have no difficulty in locating the minutes and the resolutions and forwarding these to us. After all, the dates are known, and the resolutions must be consecutively numbered. By now, the minutes of the first two "decisions", must also have been approved.
6. As we have stated, any answer which has the effect that the JSE is not willing to provide the requested document will entitle Trustco to accept that no duly constituted meeting was held, and no lawful decision was ever made. This factual and legal position will then be conveyed to the relevant institutions, including the body to which Trustco's objection must be addressed as envisaged in your letter dated 13 December 2021.
7. The JSE's public pronouncements were disseminated to and read by the public at large, and assumed by Trustco (until your refusal to provide the requested resolutions) to have been validly taken. Similarly, any damages which were suffered by Trustco as a result of such publications to the public, were, until we received your letter dated 13 December 2021, assumed by Trustco to have been suffered as a result of decisions lawfully taken by duly authorised bodies at duly constituted bona fide meetings. Your refusal to adhere to the most elementary, albeit fundamental, duty - providing of information requested by Trustco -

TGH1 Resolution Request (211214)v2

Norton Rose Fulbright South Africa Inc (Reg No 198400338521) Directors: APM Robinson (Chairman) M van der Westhuizen (Chief Executive Officer) K Annalie MH Alexander MS Ash SH Barnett JW Bel H Bissel BE Botha GG Bouwer N Bowman PA Bracher DR Breier AJ Chappell M Chavosa SL Chemaly MD Coetzee C Coetzer MO Dale V David BM Denny D Dinia MC Hartwell R Hendricks CR Holmes DS Kapelus AV Karamiaks SJ Kennedy-Good SS Khoza JM Krom S Lathi REF Lake PE Lamb S Makara EJ McCaul CJ Merrington JE Midlane GA Natt UN Odayer B Perrett RP Petersen CC Pillay DR Pillay CJ Pretorius GM Rademeyer L Rech D Reddy V Reddy AK Strachan I Swart DS Tatham HJ van Rensburg C van Vuuren AP Vos M Wagener JJ Whyte AP Williams LE Williams C Woolley

Consultant: N Botha AE Buckley PM Chronis AGS Dixon MJ Hart RJ Hahn GCB Kahle WP Le Roux E Lamprecht P Naude L Oberholzer
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14 December 2021

 **NORTON ROSE FULBRIGHT**

which apparently authorises coercive action, is not only unlawful but must immediately be rectified. Either by providing the requested documents, or by setting the record straight.

8. All our clients rights are reserved.

Yours faithfully



John Bell
Director
Norton Rose Fulbright South Africa Inc



"AAS"

WEBBER WENTZEL

in alliance with > **Linklaters**

Norton Rose Fulbright

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www.webberwentzel.com

By email: john.bell@nortonrosefulbright.com

Your reference	Our reference	Date
J Bell TM/117526	M Straeuli / P Mohanlall / D Harris 3043858	15 December 2021

CONFIDENTIALITY: This letter contains confidential information intended only for the person/s to whom it is addressed. No other recipient is entitled to read the rest of this letter or disclose its contents to any person, or take copies. If you have received this in error please notify us immediately by fax, e-mail or telephone at the numbers listed above.

Dear Sir

TRUSTCO GROUP HOLDINGS LIMITED ("TRUSTCO"): SUSPENSION OF LISTING OF SECURITIES

1. We act on behalf of the JSE Limited in the above matter ("**the JSE**").
2. The JSE has provided us with copies the following documents, to which we refer:
 - 2.1 the JSE's letter to Trustco Group Holdings Limited ("**Trustco**"), dated 11 November 2020 ("**the Amended Corrective Action**");
 - 2.2 the JSE's letter to Trustco Group Holdings Limited ("**Trustco**"), dated 3 December 2021 ("**the Proposed Suspension Letter**");
 - 2.3 your letter to the JSE, dated 9 December 2021 ("**your letter**");
 - 2.4 the JSE's letter to Trustco, dated 13 December 2021 ("**the Suspension Decision**"); and
 - 2.5 your letter to the JSE, dated 14 December 2021 ("**your letter**").
3. We have been instructed to address a response on behalf of the JSE to your letter, which we do below. In doing, we do not respond to each and every assertion in your letter, and the JSE reserves its right to do so in the future, should the need arise. The election not to respond is not an admission of those assertions that are not responded to.

20211215 Letter From WW To Nrf

Senior Partner: JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa NG Alp RL Appelbaum DC Bayman KL Beillings AE Bennett AP Blair AR Bowley J Braum MS Burger M Bux RI Carrim T Cassim SJ Chong ME Claassens C Collett KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies PM Daya L de Bruyn PU Dela M Denenga DW de Villiers BEC Dickinson MA Diemont DA Dingley MS Dladla G Driver W Drue GP Duncan HJ du Preez CP du Toit SK Edmundson LF Egypt KH Eiser AE Esterhuizen MJR Evans K Fazel AA Felekis G Fitzmaurice JB Forman L Franca KL Gawith OH Geldenhuys MM Gibson CI Gouws PD Grealy S Haroun JM Harvey JS Henning KR Hillis Z Hlophe CM Hofeld PM Holloway AV Ismail ME Jarvis CA Jennings JC Jones CM Jonker S Jooste LA Kahn ACR Katzke M Kennedy KE Kilner A Keyser MD Kota JC Kraamwinkel J Lamb KJ Lebea E Louw M Mahlangu V Mannar L Marais G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer AJ Mills D Milo NP Mngomezulu P Mohanlall M Moloi N Moodley LE Mostert VM Movshovich C Murphy RA Nelson G Niven ZN Ntshona M Nxumalo AN Nyatumba A October L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel N Pather GR Penfold SE Phajane M Philippides BA Phillips MA Phillips DJ Rafferty D Ramjettan GI Rapson K Rew SA Ritchie J Roberts G Sader M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh S Sithole J Smit RS Smith MP Spalding PS Stein MW Straeuli LJ Swaine Z Swanepoel A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Tihavani G Truter PZ Vanda SE van der Meulen JP van der Poel CS Vanmali JE Veeran B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warmington J Watson AWR Westwood RH Wilson KD Wolmarans DJ Wright M Yudaken

Chief Operating Officer: SA Boyd

4. The JSE notes that it is peculiar that your client is now concerned about the lawfulness of the decisions of the JSE, particularly its decision of 11 November 2020 which was taken more than a year ago and was the subject of your client's reconsideration application, where no objection was made to the taking of the decision. On the contrary your client proceeded on the basis that the decision was taken by an appropriately mandated person.
5. Nonetheless, we are instructed to address your client's concerns by confirming that the decisions referred to in your letter were taken by Mr Andre Visser in his capacity as Director of the JSE's Issuer Regulation division, acting in accordance with authority delegated to him by the JSE's board in terms of section 68 of the Financial Markets Act 19 of 2012.
6. In regard to the Suspension Decision letter, we are instructed to record that although this letter was signed by Ms AM De Bruyn, in her capacity as the General Manager of the Issuer Regulation division, the Suspension Decision was indeed taken by Mr Visser. Mr Visser was not in the JSE's office and available to sign the Suspension Decision Letter and asked Ms de Bruyn to sign it for him
7. We trust that the above addresses your client's queries.
8. We remind your client that the decisions taken by the JSE, stand and are operative until they are set aside or stayed. In those circumstances your client is required to comply with the decisions notwithstanding its views of the authority of the individual who took the decisions.
9. Our client's rights are reserved.

Yours faithfully

WEBBER WENTZEL

Michael Straeuli

Partner

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Direct fax: +27115306488

Email: michael.straeuli@webberwentzel.com



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Your reference

J Bell
TM/117526

Our reference

M Straeuli / P Mohanlal / D Harris
3043858

Date

22 December 2021

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Dear Sir

TRUSTCO GROUP HOLDINGS LIMITED ("TRUSTCO"): SUSPENSION OF LISTING OF SECURITIES

1. We refer to the above matter, and the various correspondences exchanged between the parties to date, including the following:
 - 1.1 the JSE's letter to Trustco, dated 11 November 2020 ("the JSE's Decision");
 - 1.2 the JSE's letter to Trustco, dated 13 December 2021 ("the Suspension Decision");
 - 1.3 your letter to the JSE, dated 14 December 2021;
 - 1.4 our letter to you, dated 15 December 2021;
 - 1.5 your letter to us, dated 17 December 2021 ("your letter"); and
 - 1.6 your letter to the JSE, dated 17 December 2021 ("the Objection Letter").
2. At the outset, it is not the intention of this letter to respond, on behalf of the JSE, to the Objection Letter. We have been instructed to confirm that the JSE is in the process of

20211222 Letter From WW To NRF(17414968.1)

Senior Partner: JC Els Managing Partner: SJ Hutton Partners: BW Abraham RB Africa NG Alp RL Appelbaum DC Bayman KL Bellings AE Bennett AP Blair AR Bowley J Braum MS Burger M Bux RI Carrim T Cassim SJ Chong ME Claassens C Collett KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies PM Daya L de Bruyn PU Dela M Denenga DW de Villiers BEC Dickinson MA Diemont DA Dingley MS Dladla G Driver W Drue GP Duncan HJ du Preez CP du Toit SK Edmundson LF Egypt KH Eiser AE Esterhuizen MJR Evans K Fazel AA Feleki G Fitzmaurice JB Forman L Franca KL Gawith OH Geldenhuys MM Gibson CI Gouws PD Grealay S Haroun JM Harvey JS Henning KR Hillis Z Hlophe CM Hoffeld PM Holloway AV Ismail ME Jarvis CA Jennings JC Jones CM Jonker S Jooste LA Kahn ACR Katzke M Kennedy KE Kilner A Keyser MD Kota JC Kraamwinkel J Lamb KJ Lebea E Louw M Mahlangu V Mannar L Marais G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer AJ Mills D Milo NP Mngomezulu P Mohanlal M Moloi N Moodley LE Mostert VM Movshovich C Murphy RA Nelson G Niven ZN Ntshona M Nxumalo AN Nyatumba A October L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel N Pather GR Penfold SE Phajane M Philippides BA Phillips MA Phillips DJ Rafferty D Ramjetan GI Rapson K Rew SA Ritchie J Roberts G Sader M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh S Sithole J Smit RS Smith MP Spalding PS Stein MW Straeuli LJ Swaine Z Swanepoel A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Tihavani G Truter PZ Vanda SE van der Meulen JP van der Poel CS Vanmali JE Veeran B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warmington J Watson AWR Westwood RH Wilson KD Wolmarans DJ Wright M Yudaken

Chief Operating Officer: SA Boyd

considering the Objection Letter, and the JSE reserves its rights to respond to same in due course, most likely in the new year.

3. The purpose of this letter is to address certain interim matters, relevant to the Suspension Decision and your letter.
 - 3.1 First, and with reference to your letter, a copy of our client's delegation of powers, as approved by the board of the JSE on 22 November 2011, is annexed marked "A" ("the Delegation"). We refer your attention to paragraph 2.1 of the Delegation. The JSE reserves its rights to deal with the various allegations of your client, insofar as the Delegation is concerned, as part of its formal response to the Objection Letter.
 - 3.2 Second, in respect of your client's request for oral representations made at paragraph 2 of the Objection Letter ("the request"), the JSE requests that Trustco succinctly set out: why it believes that oral representations are appropriate; why written representations are not sufficient; the issues which it wishes to address in oral submissions; the identity of the person who will make the oral submissions; and the date when Trustco intends to make these submissions. Trustco should supply this information without delay, and the JSE will consider Trustco's request. The JSE will not delay its other processes, in respect of the Objection Letter, whilst it awaits Trustco's submission on making oral representations.
 - 3.3 Third, paragraph 7.4 of the Objection Letter alleges that the JSE's Decision cannot be given effect to within an abbreviated time period, *inter alia*, given the magnitude and complexity of the restatement, and the potential unwinding of the underlying transactions in question. For the sake of clarity, compliance with the JSE's decision would not require the 31 March 2019 AFS, nor the 30 September 2020 AFS, to be re-issued and audited. Given that your client has, however, changed its financial year-end to 31 August 2021, the comparative period for the 31 August 2021 AFS will need to be restated, to give effect to the JSE's Decision. This restatement will need to be audited as part of the 31 August 2021 AFS audit.
 - 3.4 Whilst practical difficulties are by no means an excuse not to comply with the JSE's Decision, we are instructed to confirm that, should your client provide the JSE with an unequivocal, and irrevocable undertaking that the necessary restatement of your client's annual financial statements will be implemented in your client's 31 August 2021 Annual Financial Statements, the JSE will reasonably accommodate your client



in its timelines for the implementation of the JSE's Decision. Should your client so agree and comply, the basis for the Suspension Decision will fall away, which will, in turn, render the need for any objection process or court action nugatory.

4. Lastly, we are instructed to confirm that the JSE's Suspension Decision will not be implemented until such time as the objection process is finalised, or unless your client agrees as set out in paragraph 3.4 above.
5. Our client's rights are reserved.

Yours faithfully

WEBBER WENTZEL

Michael Straeuli

Partner

Direct tel: +27 11 530 5488

Direct fax: +27115306488

Email: michael.straeuli@webberwentzel.com



"A"

DELEGATION OF POWERS

"RESOLVED:

1. That in terms of section 58 of the Securities Services Act 36 of 2004 and section 72 of the Companies Act 71 of 2008 (the Acts), the Board hereby delegates to the persons or entities set out below the following powers:

1.1. To the Executive Committee, the power to:

- 1.1.1. to do all such things as the Board is required or permitted to do in terms of the Acts, the Articles and Memorandum of Association, the common law and equities, derivatives and interest rate rules and Listings Requirements of the JSE, including authorising an appropriate person to sign any affidavit that may be required to be signed by a representative of the JSE in performing any power exercised in terms hereof;
- 1.1.2. incur budgeted expenditure as per the budget applicable to the financial year in question as approved by the Board ("budgeted expenditure");
- 1.1.3. incur, in aggregate, unbudgeted expenditure not exceeding 5 % of the total budgeted expenditure for the year in question, provided that no one item of such unbudgeted expenditure exceeds R10 million;
- 1.1.4. enter into and sign any agreement between the JSE and any other person or persons which: –
- results in expenditure of R 10 million or less over the period of the agreement;
 - is of a duration of 5 years or less; or
 - is of an indefinite duration, results in expenditure of no more than R 2 million per annum with an initial term of no more than five years but thereafter may be terminated on not more than 3 months; and
 - has been formally approved and signed off by the **JSE's Legal Counsel.**

For the avoidance of doubt, it is noted that any agreements involving expenditure or duration in excess of the limits set out in 1.1.3 and 1.1.4 above are required to be approved by the JSE Board;



- 1.2. Subject to 1.3 below, to each individual Executive Committee member in respect of the operations and budget of that Executive Committee Member's division, the power to:
- 1.2.1. incur budgeted expenditure of any one item up to a maximum of R 1 Million;
- 1.2.2. enter into and sign any agreement between the JSE and any other person or persons that –
- results in expenditure of no more than R 300 000 per annum;
 - results in expenditure of up to a maximum of R1.2 million over the period of the agreement;
 - has a duration of no more than three years; or
 - is of an indefinite duration, results in expenditure of no more than R 300 000 per annum with an initial term of no more than three years but thereafter may be terminated on not more than 3 months; and
 - has been formally approved and signed off by the **JSE's Legal Counsel**.

For the avoidance of doubt, it is noted that any agreements involving expenditure or duration in excess of the limits set out in 1.2.1 and 1.2.2 above are required to be approved by the JSE Executive Committee;

- 1.3. To the Chief Information Officer in respect of the operations and budget of the **Technology Division**, the powers as are set out in the document entitled "ITD Contracts Delegation Policy V1.00", the content of which is set out hereunder in these minutes;
- 1.4. To an employee of grade 15 and above ("employee"), in respect of the operations and budget of the division in which that person is employed, the power to:
- 1.4.1. incur budgeted expenditure of any one item up to R 500 000: Provided that the general authority of a specific individual to incur expenditure on this basis has been tabled and approved by the Executive Committee in advance of the exercising of the said power.



2. That, save for the power or duty to decide whether the listing of the securities of a company on the JSE should be terminated at the instance of the JSE, which power is delegated to the Executive Committee, the Board hereby delegates the powers and duties under sections 13 and 15 of the Securities Services Act, and the Listing Requirements to –
 - 2.1. the head of the **Issuer Regulation Division** or the General Manager: Issuer Regulation, or other appropriate person or persons as identified by the Executive Committee; and
 - 2.2. the Listings Appeal Committee, provided that the Listings Appeal Committee may only exercise any of the powers or duties so delegated after it receives a request for appeal.
3. The Board hereby delegates the power to enter into and sign:
 - any Information Distribution agreements between the JSE and any JSE public information user to the **Head of the Market Data Division**, or failing such person for any reason, any member of the Executive Committee, provided that the agreements are the standard form Information Distribution agreements as approved by the JSE Executive Committee from time to time;
 - any Clearing Agreements between the JSE and a clearing member of the JSE to the Head of the **Post Trade Services Division** or failing such person for any reason, any member of the Executive Committee, provided that the agreements are the standard form clearing agreement as approved by the JSE Executive Committee from time to time;
 - Any JSE Services Agreements between the JSE and any authorised user or other party, including the JSE Services Agreement, the Shared Infrastructure Provider Agreement and the Talx End user Agreement to the Head of the **Equities Division** or failing such person for any reason, any member of the Executive Committee, provided that the agreement is the standard form clearing agreement as approved by the JSE Executive Committee from time to time.

That any and all existing delegations will remain in force unless they are contrary to the delegations effected in terms of these resolutions.

(Resolved on 1 December 2000 and amended on 6 November 2001, 7 May 2002, 5 August 2003, 22 November 2005, 13 March 2007, 20 November 2007, 22 November 2011)



"AA7"

13 January 2022

NORTON ROSE FULBRIGHT

Norton Rose Fulbright South Africa Inc
15 Alice Lane
Sandton 2196
South Africa

By Email: michael.straegli@webberwentzel.com

Michael Straegli
Webber Wentzel

Dear Michael

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Direct line
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Your reference Our reference
M Straegli / PTGH1/J Bell
Mohanlall / D Harris
/3043858

TRUSTCO GROUP HOLDINGS (PTY) LTD / JSE LIMITED

- 1 We refer to your letter of 22 December 2021.
- 2 In respect of paragraph 31 of your letter:
 - 2.1 Firstly, the resolution now attached gainsays the instruction you received previously, as conveyed to us;
 - 2.2 Secondly, the resolution is not numbered; and
 - 2.3 Thirdly, the resolution itself, even if valid, confirms that the decisions under discussion and forming the purported basis of all action taken in respect of Trustco were taken in an ultra vires manner;
 - 2.4 Fourthly, given the contradictions between the various JSE documentation relating to the purported authority of Mr Visser, and in order to get a proper understanding of the context within which the decision reflected in the resolution was taken, we require a copy of the minute of the meeting where this decision was taken.
- 3 We call again on the JSE to inform the market of these defects. Trustco's prejudice and damages are escalating every day the incorrect information in the market is not withdrawn. Our client's rights are reserved to deal with the further issues resulting from the ultra vires action, the JSE's refusal to set the record straight, and remainder of the letter at the appropriate time.
- 4 Turning to paragraphs 3.2 to 3.4 of your letter:
- 5 We note the JSE's agreement that the restatements it require would need to be audited as part of our client's audited financial statements for the year ending 31 August 2021 ("**the 2021 AFS**"). This in itself supports our client's submission that, mindful of the date of the Tribunal's decision, the suspension decision is premature and that no such decision could have taken prior to the publishing of our client's 2021 AFS.
- 6 As to the oral submissions, we have indicated in our client's objections the complex and intergrade nature of the restatements that your client requires coupled with the knock on effect it has on the underlying transactions. Neither your client nor the decisions maker(s) are, to our client's knowledge,

Letter WW 13 01 2022

Norton Rose Fulbright South Africa Inc (Reg No 1984/003385/21) Directors: APM Robinson (Chairman) M van der Westhuizen (Chief Executive Officer) K Ainslie MH Alexander MS Ash SH Barnett JW Bell HI Bissett BE Botha GG Bouwer N Bowman PA Bracher DR Brink AJ Chappel M Chavoes SL Chernaly MD Coatsie C Coatsas MO Dale V David BM Danny D Dinnie MC Hartwell R Hendricks CR Holmes DS Kapelus AV Karadimitrakia SJ Kennedy-Good SS Khoza JM Kiron S Lahn REF Lake PE Lamb S Makare EJ McCaul CJ Merrington JE Midlane GA Notti UN Odayer B Porrett RP Paterson CC Pillay DR Pillay CJ Pretorius GM Rademeyer L Rech D Reddy V Reddy AK Strachan I Swart DS Tatham HJ van Rensburg C van Vuuren AP Vos M Wagener JJ Whyte AP Williams LE Williams C Woodley

Consultant: N Botha AE Buckley PM Chronis AGS Dixon MJ Hart RJ Hdwil GCB Kahle WP Le Roux E Lamprecht P Naude L Oberholzer
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13 January 2022

 NORTON ROSE FULBRIGHT

accounting experts and it is prudent that the aforesaid accounting complexities and time it will take to duly consider all aspects and implications of the restatements be explained to these decision maker(s), especially because neither our client nor its advisors (or its minority shareholders for that matter) agree with the restatements.

- 7 Moreover, a suspension is, barring a termination of a listing, the most severe sanction that the JSE can impose. Given the immense prejudice and damaging consequences this entails, particularly where it cannot be undone, and in circumstances where the underlying decision is the subject of a review and the possibility exists that the Tribunal's decision is set aside, it would be prudent for the decision-making body to be provided with as much information as possible and be able to engage with our client face to face in respect of our client's objections and any queries they have in respect thereof.
- 8 To try and deal with these types of issues based solely on the papers will not only be to our client's prejudice but also place the decision-making body in a precarious and uninformed position as they will undoubtedly need to have a clear understanding of the issues in order to properly consider our client's objections. This can only be achieved through oral submissions and engagement.
- 9 Our client therefore proposes to make submissions on each of the matters raised in its objections with a particular focus on the time this will take and the time it will take to come to a determination on how to practically implement the restatements pending the outcome of a review application. Our client would also propose to make submissions on why a suspension at this stage is, in addition to being premature, a wholly inappropriate remedy.
- 10 Oral submissions will be made by Dr Quinton van Rooyen (CEO), Mr Floors Abrahams (CFO) and Mr Tapiwa Njikizanas, our client's independent IFRS advisor. Our client further proposes for these submissions to be made on either 27 or 28 January 2022 via Zoom or MS Teams. Our client's representatives are also prepared to travel to Johannesburg for an in-person meeting if so required by the JSE.
- 11 Until our client has, in conjunction with its and external advisors, come to a determination as to how to practically implement the restatements pending a review, our client is not at this juncture able to give the undertaking sought in paragraph 3.4 of your letter under reply. As communicated to the JSE, our client does however undertake to publish its 2021 AFS by no later than 31 January 2022.
- 12 We await your response and in the interim all our client's rights remain reserved.

Yours faithfully



John Bell
Director
Norton Rose Fulbright South Africa Inc



"AA8"

WEBBER WENTZEL

in alliance with > **Linklaters**

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Your reference	Our reference	Date
J Bell TM/117526	M Straeuli / P Mohanlall / D Harris 3043858	20 January 2021

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Dear Sir

TRUSTCO GROUP HOLDINGS LIMITED ("TRUSTCO"): SUSPENSION OF LISTING OF SECURITIES

- We refer to the above matter, and to the various correspondences exchanged between the parties to date, including the following:
 - the JSE's letter to Trustco, dated 13 December 2021 ("**the Suspension Decision**"); and
 - your letters to the JSE, dated 14 and 17 December 2021;
 - our letter to you, dated 22 December 2021; and
 - your letter to us, dated 13 January 2022 ("**your letter**").
- We note from your letter that Trustco persists in taking issue with Mr Visser's authority. The JSE denies that Mr Visser lacked authority, and maintains that all its decisions were lawfully made. The JSE is also satisfied that it has provided Trustco with sufficient information to address its concerns.
- As regards Trustco's request for an opportunity to make oral submissions, we are instructed that the JSE has carefully considered the request made in your letter as to why your client considers oral submissions are appropriate and necessary.

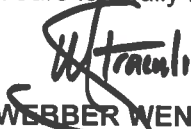
Senior Partner: JC Els Managing Partner: SJ Hutton Partners: BW Abraham RB Africa NG Alp RL Appelbaum DC Bayman KL Beillings AE Bennett AP Blair AR Bowley J Braum MS Burger M Bux RI Carrim T Cassim SJ Chong ME Claassens C Collett KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies PM Daya L de Bruyn PU Dela M Denenga DW de Villiers BEC Dickinson MA Diemont DA Dingley MS Dladla G Driver W Drue GP Duncan HJ du Preez CP du Toit SK Edmundson LF Egypt KH Eiser AE Esterhuizen MJR Evans K Fazel AA Felekis G Fitzmaurice JB Forman L Franca KL Gawith OH Geldenhuys MM Gibson CI Gouws PD Grealy S Haroun JM Harvey JS Henning KR Hillis Z Hlophe CM Holfeld PM Holloway AV Ismail ME Jarvis CA Jennings JC Jones CM Jonker S Jooste LA Kahn ACR Katzke M Kennedy KE Kilner A Keyser MD Kota JC Kraamwinkel J Lamb KJ Lebea E Louw M Mahlangu V Mannar L Marais G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer AJ Mills D Milo NP Mngomezulu P Mohanlall M Moloi N Moodley LE Mostert VM Movshovich C Murphy RA Nelson G Niven ZN Ntshona M Nxumalo AN Nyatumba A October L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel N Pather GR Penfold SE Phajane M Philippides BA Phillips MA Phillips DJ Rafferty D Ramjettan GI Rapson K Rew SA Ritchie J Roberts G Sader M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh S Sithole J Smit RS Smith MP Spalding PS Stein MW Straeuli LJ Swaine Z Swanepoel A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Tihavani G Truter PZ Vanda SE van der Meulen JP van der Poel CS Vanmali JE Veeran B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warrington J Watson AWR Westwood RH Wilson KD Wolmarans DJ Wright M Yudaken

Chief Operating Officer: SA Boyd



4. Trustco has no automatic right to an opportunity to make oral submissions. The JSE has afforded Trustco an opportunity to make written submissions which is sufficient to ensure that Trustco is able to present whatever arguments it believes are necessary.
5. In the circumstances, Trustco is requested to deliver any written submissions it wishes to make by close of business on **Wednesday, 26 January 2022**. If the written submissions are not received by 26 January 2022 the JSE will accept that Trustco has elected not to provide written submissions.
6. Following receipt of Trustco's written submissions, the JSE will await the publication of Trustco's annual financial statements for 2021 by 31 January 2022 in order to consider its contents and whether this impacts upon the Suspension Decision. The JSE will then deliver its decision on whether or not to uphold Trustco's objection to the Suspension Decision as soon as reasonably possible thereafter.
7. The JSE looks forward to receiving Trustco's written submissions in due course.
8. Our client's rights are reserved.

Yours faithfully ,



WEBBER WENTZEL

Michael Straeuli

Partner

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"AAG"

26 January 2022

NORTON ROSE FULBRIGHT

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Your reference **Our reference**
M Straegli / P TGH1/J Bell
Mohanlall / D Harris
/3043858

Dear Michael

TRUSTCO GROUP HOLDINGS LIMITED / JSE LIMITED: SUSPENSION OF LISTING OF SECURITIES

- 1 We refer to your letter of 20 January 2021.
- 2 It's disappointing and unfortunate to note your client's refusal to allow our client the opportunity to make oral representations simply on the basis that our client has no express right thereto. One would have thought that your client would be amenable and in fact deem it prudent to discuss and interrogate our client's objections on a matter of this magnitude in a fair, open and transparent forum.
- 3 Our client accordingly persists in the grounds of objection as set out in our letters of 17 December 2021 and 13 January 2022.
- 4 That said, it would appear from your letter that your client is in fact intent on dismissing our client's objection simply based on how it presents its annual financial statements (**AFS**) on 31 January 2022 rather than with regard to any of the grounds of objection raised.
- 5 We are accordingly instructed that the AFS will, whilst noting that the JSE is in fact not in terms of paragraph 8.65 of Listing Requirement authorised to order a restatement and as an interim measure pending the determination of our client's application to review the Tribunal's decision (**Review**), address the restatements.
- 7 Once the JSE has considered the AFS, and in the event that it disagrees with how the AFS are presented as an interim measure, then we request that our clients' respective representatives meet as soon as possible in order to discuss the matter at hand in an effort to resolve it in an expedient and amicable manner.
- 8 If the JSE is not agreeable to the above approach and if it will seek to uphold the initial suspension decision, then we request an undertaking that we be provided with 96 hours' notice before such a suspension would take effect in order to afford our client the opportunity to seek the necessary urgent injunctive relief to stay implementation of such a decision.
- 9 Lastly, we anticipate to issue the Review during the course of next week. Please advise whether your offices are authorised to accept service of the application on behalf of the JSE.
- 10 Our client's rights remain fully reserved.

Letter WW (220126)v2

Norton Rose Fulbright South Africa Inc (Reg No 1984/0033852/1) Directors: APM Robinson (Chairman) M van der Westhuizen (Chief Executive Officer) K Ainslie MH Alexander MS Aah SH Barnett JW Bell HJ Bisset BE Botha GG Bouwer N Bowan PA Bracher DR Breier PA Cartwright M Chavous SL Chemaly MD Cossie C Costas MO Dale V David BM Denny D Dinnie MC Hartwell R Hendricks CR Holness DS Kapela AV Karamafaka SJ Kennedy-Good SS Khoza JM Kron S Labri REF Lake PE Lamb S Makara EJ McCaul CJ Merrington JE Midlane T Moodley GA Nott BP O'Connor UN Odysar B Parratt RP Petersen CC Pillay DR Pillay CJ Pretorius GM Rademeyer L Rech D Reddy V Reddy AK Strachan I Swart DS Tatham HJ van Renenburg C van Vuuren AP Vos M Wagener JJ Whyte AP Williams LE Williams C Woolley

Consultant: N Botha AE Buckley AJ Chappel PM Chrona AGS Dixon MJ Hart RJ Holwell GCB Kahle WP Le Roux E Lemprecht P Naude J Oberholzer
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26 January 2022

 NORTON ROSE FULBRIGHT

Yours faithfully



John Bell
Director
Norton Rose Fulbright South Africa Inc



"AAIO"

THE FINANCIAL SERVICES TRIBUNAL

In the matter of:

TRUSTCO GROUP HOLDINGS LIMITED

Applicant

and

JSE LIMITED

Respondent

**APPLICATION FOR SUSPENSION OF A DECISION OF THE JSE LIMITED IN
TERMS OF SECTION 231 OF THE FINANCIAL SECTOR REGULATION ACT,
2017**

PLEASE TAKE NOTICE that the applicant hereby applies in terms of section 231 of the Financial Sector Regulation Act, 2017 for the suspension of the JSE Limited's decision on 13 December 2021 and 14 February 2022 that:

1. Trustco has failed to comply with the Listings Requirements and the JSE decision and in so doing, has disregarded the Financial Services Tribunal' decision; and
2. that the appropriate recourse for Trustco's aforementioned failures is to suspend the listing of its securities, as this would further the objectives of the Financial Markets Act, 19 of 2012 and would manifestly be in the public interest.

TAKE FURTHER NOTICE than the affidavit by **RIAAN BRUYNS** is attached hereto in support of this application.



DATED at SANDTON on this the 18th day of FEBRUARY 2022



**NORTON ROSE FULBRIGHT SOUTH
AFRICA INC**

Attorneys for the Applicant
15 Alice Lane
Sandton

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Ref: TGH1/J Bell

TO: FINANCIAL SERVICES TRIBUNAL

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