

FCSA slaps Steinhoff's Jooste with R161m fine

The Financial Sector Conduct Authority (FCSA) has imposed a R161 million administrative penalty on former Steinhoff chief executive (CEO), Markus Johannes Jooste, for breaching sections of the Financial Markets Act.



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In a statement issued on Friday, the authority said the breaches were in relation to provisions that prohibit an insider from disclosing inside information and/or encouraging or discouraging another person to deal in securities to which the inside information relates.

“The insider trading breaches were in respect of share transactions in Steinhoff International Holdings NV (Steinhoff) during November and December 2017,” the FCSA said.

The FCSA said the administrative penalty imposed on Jooste is pursuant to an investigation by the authority, which found that in November 2017, shortly before the much-publicised significant decrease in the market value of Steinhoff shares, Jooste was privy to Steinhoff related inside information.

“Whilst privy to inside information, he disclosed some of the information in a ‘warning SMS’, encouraging four individuals close to him to dispose of their Steinhoff shares prior to the publication of some of the inside information to the rest of the market,” said the authority.

Three recipients acted on his disclosure and encouragement, and sold Steinhoff shares.

“The legislated approach in calculating insider trading related penalties, as outlined in the Financial Markets Act, requires, as a starting point, a determination of the losses avoided or profits made (‘the ill-gotten gains/ benefit’) by those who traded whilst in possession of inside information,” said the FCSA.

Provisions of the Act permit the FCSA to order the beneficiaries to pay back the ill-gotten benefit.

The authority said this is a legal principle referred as “disgorgement”.

In addition, said the authority, the three may be required in each case to pay an amount for penalty purposes, which does not exceed three times their benefit.

“In cases of disclosure or encouragement, the applicable provisions permit the Authority to order the tipper to be jointly and severally liable with those he tipped for their ill-gotten gains.

“Additionally, for penalty purposes, the tipper may also be liable to pay an amount not exceeding three times the gains made by those he tipped, an additional amount of up to R1 million, cost of the investigation and interest.

“In arriving at the amount of the administrative penalty imposed on Jooste, and in line with the provisions of section 82 (2) and 82 (3) of the Financial Markets, read with section 167 of the Financial Sector Regulation Act, 9 of 2017, the Authority considered, among other factors, the amounts of the losses avoided by the recipients of the warning SMS as a result of the offending transactions; Mr Jooste’s level of cooperation during the investigation; the seriousness of the breaches; the need to deter such conduct; and his submissions regarding the merits of the case against him (including his submissions regarding an appropriate penalty),” said the FCSA.

The penalty of R161,568,068 imposed on Jooste includes a multiple of three times the losses avoided due to the transactions executed by the recipients of the warning SMS, plus the amounts discussed further in this statement regarding his joint and several liability with two recipients of the SMS.

The penalty imposed on Jooste also includes an amount of R1 million for disclosing inside information and encouraging Jaap du Toit to sell his Steinhoff shares. Notwithstanding the disclosure and encouragement, Du Toit never acted on the contents of the warning SMS.

Jooste has also been ordered to pay interest on the penalty amount of R161,568,068. The interest is in respect of any unpaid portion of the administrative penalty, until the penalty is fully paid.

He is also ordered to pay the authority’s costs incurred in connection with investigating the contraventions in this matter.

The FCSA has also imposed a R115 million penalty on Ocsan Investment Enterprises (Pty) Limited (Ocsan), a company that was controlled by a long-time acquaintance of Jooste - the late Ockie Oosthuizen.

Oosthuizen instructed Ocsan’s sale of Steinhoff shares on 30 November 2017 following receipt of the warning SMS and thus caused Ocsan to breach section 78 (1) of the Financial Markets Act.

Amongst other relevant considerations, the Authority found that Oosthuizen deliberately misled investigators during questioning and thus failed to provide meaningful cooperation.

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