

## Summary – Coral Lagoon/Ash Brook/Regiments Capital Mr J Loeb restraint matter etc.

### Purpose of the document

The purpose of this document is provide an overview and explanation of recent events, regarding Mr Jonathan Loeb’s actions in violation of his restraint of trade as per his Regiments Capital employment contract.

It further highlights the potential use of Regiments Capital’s intellectual property and know-how, the extent of which is potentially far-reaching. It discusses how the potential use of Regiments’ intellectual property, by Mr Loeb in his capacity as transaction advisor to Regiments business associates, resulted in the successful conclusion of a transaction of a sensitive and privileged nature.

These actions have caused Regiments, and potentially other Regiments business associates, significant damages. The full extent of damages is not yet clear. Given the nature and quantum of the damages being suffered, Regiments requires appropriate action to be taken, whether on an urgent basis or not against Mr Loeb to:

1. Gain further evidence to support Regiments’ damages claim against Mr Loeb or other persons, before such evidence can be destroyed; and
2. Stop the unlawful use of Regiments’ IP and breach of restraint of trade.

### Jargon

<b>Definition</b>	<b>Explanation</b>
<b>Call Option</b>	An agreement that gives the purchaser the right (but not the obligation) to buy a stock, bond, commodity, or other instrument at a specified price (strike price) within a specific time period from the seller of the option.
<b>Put Option</b>	An agreement that gives the purchaser the right (but not the obligation) to sell a stock, bond, commodity, or other instrument at a specified price (strike price) within a specific time period to the seller of the option.
<b>Option value (premium)</b>	An option has an option value or “option premium”, which is paid by the purchaser of the option to the seller of the option. The Option premium is determined by the spot price of the underlying instrument, the option period, the risk-free rate over the period, the yield on the instrument and the strike price of the option. Strike price can be defined as the defined future price payable for the underlying instrument. For detailed explanation, see Black-Scholes option pricing method.
<b>Delta</b>	The ratio comparing the change in the price of the underlying asset to the corresponding change in the price of a derivative. Sometimes referred to as the "hedge ratio.
<b>Hedge</b>	Making an investment to reduce the risk of adverse price movements in an asset. Normally, a hedge consists of taking an offsetting position in a related security, such as a futures contract.

<b>Delta Neutrality</b>	<p>A portfolio consisting of positions with offsetting positive and negative deltas so that the position of delta is zero. A delta-neutral portfolio balances the response to market movements for a certain range to bring the net change of the position to zero. Delta measures how much an option's price changes when the underlying security's price changes.</p>
<b>Scrip</b>	<ol style="list-style-type: none"> <li>1. A written document that acknowledges a debt.</li> <li>2. A temporary document representing a fraction of a share resulting from a split or spin-off. Scrips may be applied to the purchase of full shares.</li> </ol>
<b>Zero Cost Collar</b>	<p>A type of positive-carry collar that secures a return through the purchase of a cap and sale of a floor. Also called "zero cost options" or "equity risk reversals."</p> <p>This investment strategy is sometimes used in relation to interest rates, commodities, options, and equities. Investors looking to secure a return will sell a cap and buy a floor, whereas borrowers will sell a floor and buy a cap. For investors, the cost of the cap is offset by the income received from the floor.</p> <p>An example of a zero cost option collar is the purchase of a put option and the sale of a call option with a lower strike price. The sale of the call will cap the return if the underlying falls in price, but it will also offset the purchase of the put. Obviously, upside risk is still unlimited.</p>
<b>Collar</b>	<p>A protective options strategy that is implemented after a long position in a stock has experienced substantial gains. It is created by purchasing an out of the money put option while simultaneously writing an out of the money call option.</p> <p>The purchase of an out-of-the money put option is what protects the underlying shares from a large downward move and locks in the profit. The price paid to buy the puts is lowered by amount of premium that is collect by selling the out of the money call. The ultimate goal of this position is that the underlying stock continues to rise until the written strike is reached.</p> <p>An example is a circuit breaker which is meant to prevent extreme losses (or gains) once an index reaches a certain level.</p> <p>Collars can protect you against massive losses, but they also prevent massive gains.</p>

## Parties

<b>Person</b>	<b>Roles</b>
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<b>Litha Nyhonyha</b>	<ul style="list-style-type: none"> <li>• Executive Chairman: Regiments Capital</li> <li>• Chairman of the Board: Coral Lagoon Investments 194</li> <li>• Chairman of the Board: Ash Brook Investments 15</li> </ul>
<b>Tshepo Mahloele</b>	<ul style="list-style-type: none"> <li>• Previous: Head of Corporate Finance and Isibaya Fund at the PIC</li> <li>• Chief Executive: Harith Fund Managers</li> <li>• Director: Coral Lagoon Investments 194</li> <li>• Director: Ash Brook Investment 15</li> <li>• Director: Petratouch</li> </ul>
<b>Zwelibanzi “Miles” Nzama</b>	<ul style="list-style-type: none"> <li>• Director: Coral Lagoon Investments 194</li> <li>• Director: Ash Brook Investment 15</li> </ul>
<b>Jonathan Loeb</b>	<ul style="list-style-type: none"> <li>• Previous: Head of Corporate Finance: Regiments Capital</li> <li>• Founder: 18 Equity</li> </ul>
<b>Warren Wheatley</b>	<ul style="list-style-type: none"> <li>• CIO: TSS Capital</li> <li>• Advisor to Mr Mahloele</li> <li>• Director: Petratouch</li> </ul>

## Timeline

<b>Date</b>	<b>Description of event</b>
<b>November 2006</b>	Regiments Capital is approached by Messrs Miles Nzama and Tshepo Mahloele to assist in the conclusion of a Black Economic Empowerment (“BEE”) transaction with Capitec Bank. Regiments Capital to be a 15% shareholder in the BEE Consortium.
<b>December 2006</b>	Coral Lagoon (100% owned by Ash Brook) successfully concludes the BEE transaction by acquiring 10 million Capitec shares at R30.00 each. The transaction is funded by the IDC (R285m) Capitec (R15m) and Regiments (R3m). Regiments increases its shareholding in Ash Brook to 18%.
<b>January 2009</b>	Mr Jonathan Loeb joins Regiments Capital as Associate Investment Banker (progressed over time to Head: Corporate Finance)
<b>March 2011</b>	Regiments Capital is appointed as administrator of the Ash Brook and Coral Lagoon consortium. Mr Loeb is main point of contact between Regiments and the Ash Brook shareholders.
<b>November 2011</b>	Regiments Capital successfully concludes a structured investment into MTN Zakhele, a listed BEE vehicle. Regiments uses proprietary derivative structuring to secure a risk-free transaction. Mr Loeb is integral member of the deal team.
<b>February 2012</b>	<p>Coral Lagoon restructures its investment into Capitec and sells 5.2m shares to the PIC’s Isibaya Fund. It is the intention of the parties that the shares shall be warehoused for on-sale to another BEE grouping, of which Coral Lagoon shall, at minimum, be a participant.</p> <p>Mr Loeb plays an integral role in the negotiation and implementation of the restructure. Regiments Capital (c. R3m), Messrs Mahloele and Nzama (c. R3m each), as well as other board members are paid a “corporate finance fee” for the successful implementation of the restructure.</p>

<b>October 2012</b>	Following consultation with Capitec Bank, Mr Litha Nyhonyha is advised that the PIC is in the process of selling c. 2.6m of the warehoused shares to an educational trust. Mr Loeb, acting on behalf of Regiments Capital, inquires about the process and indicates to the PIC that Regiments would like to participate in the acquisition of the other c. 2.6m shares, if still available. Neither transaction is successfully concluded.
<b>2013-2014</b>	Various BEE transaction structures are explored by Regiments, led by Mr Loeb. Restructuring of the Coral Lagoon shareholding, the MTN Zakhele shareholding and other potential structures are explored with Standard Bank, Investec and private consultants. Significant exposure to derivative based restructuring is gained by Mr Loeb in this process.
<b>November 2014</b>	Mr Loeb resigns from Regiments Capital in order to start his own business - the details of which are not divulged. His employment contract references a 12-month non-compete clause that precludes him from participating in Regiments' areas of expertise within the borders of South Africa or approaching Regiments' clients or business associates.
<b>March 2015</b>	Regiments is informed by Mr Nzama that Mr Loeb is assisting him as transaction advisor. Mr Nzama further confirms that Mr Mahloele is also being assisted by Mr Loeb on a separate matter. This is in direct contrast to his non-compete agreement.
<b>23 March 2015</b>	Regiments issues a letter to Mr Loeb, informing him of Regiments' discovery that he was acting in breach of his obligations. Loeb is instructed to abide by his obligations, return/destroy all Regiments files and desist from approaching Regiments' clients/customers to provide services or solicit Regiments' employees
<b>26 March 2015</b>	Mr Loeb responds by stating that he is not in breach and that Regiments should furnish details of the said breach in order for him to comply
<b>7 April 2015</b>	Regiments states that it does not wish to divulge information relating to its clients or associates due to the sensitive nature thereof. Regiments further states that should Loeb not cease and desist it will have no choice but to involve the said clients/associates
<b>16 April 2015</b>	Loeb responds by stating that Regiments have again not disclosed the act of breach or the particulars of the client allegedly approached. Loeb confirms that he is not acting in competition to Regiments, he has not approached Regiments' clients and has not approached any employees to offer them employment. He further states that he shall continue to not engage in these activities.
<b>23 April 2015</b>	Regiments responds stating that it does not agree with Loeb's view that he has not approached clients, but accepts that he will cease and desist. Regiments reserves its rights throughout the process.
<b>12 May 2015</b>	Capitec Bank issues a SENS announcement stating that the PIC's Isibaya Fund has sold the 5.2m shares to a BEE grouping, the identity of which is undisclosed. It is reported that Investec assisted with a financing structure for the transaction.
<b>15 May 2015</b>	Regiments uncovers a series of e-mails in Mr Loeb's old Regiments e-mail account ( <a href="mailto:JonathanL@regiments.co.za">JonathanL@regiments.co.za</a> ). It

	<p>appears numerous e-mails we've sent to this e-mail address in error by Mr Mahloele and another advisor, Mr Wheatley from TSS Capital.</p> <p>The e-mail trail spans from 4 March 2015 to 24 April 2015 and includes details of the transaction as announced on 12 May by Capitec. Amongst others, it includes e-mails to and from the PIC, various attachments to such e-mails including a letter to Capitec Bank, drafted by Mr Loeb, draft transaction agreements, non-disclosure agreements and statutory documents for Petratoch (Pty) Ltd.</p> <p>Petratoch is the acquirer of the shares, with Messrs Mahloele and Mr Wheatley registered as directors.</p> <p>It is evident from the e-mail trail that derivative structuring, similar to that being explored by Mr Loeb during his tenure at Regiments, was utilised in the funding of this transaction.</p>
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## Regiments IP used

As per the overview contained in the Timeline, Mr Loeb had significant exposure to structured equity investments, specifically regarding BEE schemes during his tenure at Regiments. It is Regiments' strong view that without this exposure, Mr Loeb would not have:

1. been aware of the c. 5.2m warehoused shares held by the PIC, or the reduced lock-in period attached thereto as negotiated as part of the Coral Lagoon restructure in February 2012;
2. had any relationship with Messrs Mahloele or Nzama, who are Regiments' business associates and long-time friends of its directors;
3. been able to act as transaction advisor in this instance where the structure required significant equity derivative structuring expertise and relationships with funders to conclude.

The transaction implemented was the direct result of relationships and intellectual property gained at Regiments and as a result, could've been utilised by Regiments Capital to fulfil the role that Mr Loeb played. Any or all fees paid to him as a result of his actions have thus, in Regiments' opinion, been gained unlawfully and can be claimed by Regiments as damages in a court of law.

### IP used in the Petratoch transaction:

According to communications Regiments gained access to, Petratoch structured the transaction as follows:

- Petratoch acquired 5,284,735 shares from the PIC at a price of R325.17 per share, representing a discount of 15% to the 30-day volume weighted average price of Capitec shares of 382.56 as at 27 February 2015
- Total consideration of ~R1.7 billion
- The shares are subject to a BEE lock-in period and must be owned by Black persons as defined by the B-BEEE Codes until at least 28 February 2017, as per the agreements negotiated in February 2012

- To raise the ~R1.7 billion funding required, Petratoch approached Investec Bank to implement a derivative funding structure
- Because Investec, being a non-Black entity, is not allowed to take ownership of the shares until 28 February 2017, a derivative structure known as a “Zero-cost collar” is implemented
- A “Zero-cost collar” is established by buying a put option while selling an out-of-the-money call option with a strike price at which the premium received is equal to the premium of the put purchased
- The call option sold is a “covered call”, meaning that the seller of the option holds enough of the underlying shares to deliver in the event of the option being exercised. This process raises the ~R1.7 billion required by Petratoch to acquire the shares from the PIC
- Investec then needs to “hedge its delta”. This means Investec has to protect itself from a change in the Capitec share price versus the change in value of the Put Option sold to Petratoch and the call option bought from Petratoch.
- To achieve “delta neutrality”, Investec needs to sell a sufficient number of Capitec shares in the market. However, Investec does not have this quantum of Capitec shares available.
- Investec thus needs to borrow the shares from someone in the market. These shares are then lent to Investec by Petratoch to effect the structure.
- It was reported that Investec sold c. 3.7m Capitec shares at a price of c. R506 per share.
- Petratoch holds the remaining c. 1.58m shares, effectively risk free, which can be sold in the market once the BEE lock in expires in February 2017. The value of these shares at a Capitec spot price of R522.45 as at 16 May 2015 is c. R830m.
- Petratoch acquired c. R830m of value without providing any funding.

### MTN Zakhele

Regiments Capital concluded a similar transaction with Standard Bank in 2011, with Mr Loeb being a key member of the team.

- MTN Zakhele is an empowerment vehicle that was established to acquire a meaningful shareholding in MTN Ltd
- The transaction was concluded at a discount to the prevailing market price, included vendor facilitation and other forms of favourable funding
- Regiments acquired a large amount of MTN Zakhele shares, funded via a derivative funding structure implemented by Standard Bank
- Regiments sold a sufficient number of what is effectively “covered MTN Ltd calls” in order to fund the acquisition of the MTN Zakhele shares. Regiments effectively retained half of the exposure risk-free, without providing any funding.
- During 2013 and 2014, Regiments aimed to increase its exposure to, and restructure its investment in, MTN Zakhele. Various derivative funding structures (including “Zero-cost collars”, amongst others) were explored with Standard Bank, Investec Bank and independent consultants with strong links to ABSA Capital.
- It is noted that Mr Loeb pursued a separate MTN Zakhele investment in his personal capacity during this time, in contravention of his employment

contract. Regiments forgave this wrong-doing and advised him not to proceed with the intended structure.

## Capitec

The Coral Lagoon transaction was originally implemented with the assistance of Regiments. The restructuring of this shareholding in February 2012 was largely driven by Regiments as evidenced by the corporate finance fee paid to it.

Mr Loeb was extensively involved in the negotiations with the PIC, Capitec and Coral Lagoon at the time and, as a result of this, had intimate knowledge of the terms attached to the shareholdings and the parties and individuals involved. In October 2012, when the PIC was intending to dispose of a component of the warehoused shares, Mr Loeb was representing Regiments as potential purchaser of the shares and thus had full knowledge of Regiments' intentions to participate in the acquisition of these shares when they became available.

Throughout 2013 and 2014, Regiments Capital investigated numerous funding structures to refinance the Ash Brook/Coral Lagoon investment into Capitec.

- Amongst other funders, Investec was approached to consider a derivative funding structure, similar to the structure implemented by Petratouch
- However, since the Coral Lagoon shareholding did not have its BEE restrictions relaxed as part of the February 2012 restructure, derivative structuring proved difficult to implement.
- The c. 4.7m shares retained by Coral Lagoon after the February 2012 restructure are subject to an evergreen BEE lock-in, unlike the defined 28 February 2017 expiry date on the PetraTouch block of shares.
- Without the relaxation of the BEE lock-in on the PetraTouch shares, the scrip-lending and "Zero-cost collar" would not be possible to execute.
- Mr Loeb was intricately aware of these provisions due to his involvement in the various processes as an agent of Regiments.

## Damages and risk to further damages

Regiments is of the view that, in light of the above, a clear disregard for the provisions of the restraint of trade in Mr Loeb's employment contract shown by him has caused Regiments significant financial harm and loss of income.

Regiments has, by a mere fortuitous turn of events, discovered evidence of Mr Loeb's wrongdoing as repeatedly denied by him. He is not aware of these developments at the moment.

Regiments thus feels the need to protect itself from further damages and recover past damages in the following ways:

1. Further evidence required in order to prove and strengthen Regiments' case for damages and Loeb's breach of contract.
  - a. The evidence Regiments has collected was based on what was conveyed verbally directly to Regiments by a business partner and client until 15 May 2015, when e-mails were discovered in his old Regiments e-mail account. The fact that the parties sent e-mails to his Regiments e-mail address in error serves as proof that this relationship existed purely because of his employment at

Regiments and due to previous communications between the parties and Mr Loeb in his capacity as Regiments' agent.

- b. Loeb has not been forthcoming in his interactions with Regiments regarding the breach of contract communicated to him during March and April 2015, in fact, *he was actively pursuing the said unlawful activities at the time of responding to Regiments' letters according to the evidence uncovered.*
  - c. Regiments is thus of the view that Mr Loeb acted unethically and in contravention with his restraint of trade in his legal responses and is likely to do so again. Regiments is concerned that Loeb may destroy additional evidence that can be used to prove its damages case against him should any application be made in court to enforce Regiments' rights.
  - d. Regiments requires that evidence be obtained on an urgent basis to avoid any further prejudice. From what can be seen by Mr Loeb's surreptitious actions it is highly likely that because he is aware of his wrongful actions he will attempt to further hide or destroy evidence that might show what exactly he gained from the aforementioned transactions to Regiment's detriment.
  - e. The evidence that may be obtained from any Anton Piller judgement:
    - i. Contracts between Mr Loeb and his clients
    - ii. Detail of Mr Loeb's fee structure
    - iii. Detail of Mr Loeb's proposals to any of Regiments' business associates and/or clients
    - iv. Detail of intellectual Regiments' intellectual property, including but not limited to contact lists and lists of clients. Emails were also found on Mr Loeb's old Regiments email address that he sent himself some of Regiments' clients' contact lists.
    - v. Any current or future business proposals and/or business that Mr Loeb is busy with in non-compliance with his restraint of trade. Because Mr Loeb has sent himself client contact lists before he left Regiments' employ and in view of his actions it is highly likely that he other client relationships are being leveraged to his advantage and to the detriment of Regiments.
  - f. Regiments believes that further evidence is to be found on:
    - i. Loeb's computers and electronic storage devices (USBs, external hard drives, etc.)
    - ii. Loeb's tablet computer
    - iii. Loeb's e-mail domain (jonathanl@18equity.com)
    - iv. Loeb's call records
    - v. Hard copies of relevant documentation in Loeb's residence
    - vi. Hard copies of relevant documentation in 18 Equity's office, if any.
2. Interdict to be sought.
- a. An interdict can be sought now, based on recent concrete findings.

- b. However, any indication to Mr Loeb that Regiments is in possession of concrete evidence regarding his unlawful actions, is likely to trigger a response from Mr Loeb to destroy any further evidence.