



THE FINANCIAL SERVICES TRIBUNAL

CASE NO. JSE2/2025

In a matter between:

TRUSTCO GROUP HOLDINGS LIMITED

APPLICANT

and

JSE LIMITED

RESPONDENT

TRIBUNAL PANEL: MF Legodi JP (Panel Chair), F Kgomo JP and C Pretorius J.

Appearance for Applicant: J Daniels SC

Appearance for Respondent: Ian Green SC

Date of hearing: 14 August 2026

Date of Decision: 20 August 2026

Summary: Application for reconsideration of public censure and R5 million financial penalty imposed on the applicant by JSE, for contravening paragraph 9.20 (b) of the Listing Requirements. The contravention was not in dispute. The application was dismissed because the decision-maker could not be found to have exercised its discretion improperly.

DECISION

Introduction

1. This is an application for reconsideration launched in terms of section 230 of the Financial Sector Regulation Act 9 of 2017. The application is for reconsideration of a decision taken by the Johannesburg Stock Exchange (JSE) on 17 September 2025.
2. In terms of the decision, Trustco Group Holdings Limited (Trustco) was publicly censured and directed to pay a penalty of R5 million for its contravention of the Listing Requirements. The decision in respect of the public censure and penalty was published on 3 October 2025.

Background

3. On 1 August 2022, Trustco's wholly owned subsidiary companies, Meya Mining (Meya) and Germinate, concluded a term sheet agreement with SJSC Investment Limited (Investment Co). In terms of the agreement, Investment Co was to have an option to subscribe for a sufficient number of shares in Meya to potentially acquire up to 70% shareholding for a maximum subscription amount of **50 million US dollars**. Trustco's subsidiaries, referred to in paragraphs 4 and 5 hereunder, were to dispose of shareholding equivalent to 25 million US dollars each to Investment Co. The arrangement is referred to herein as the "Transaction".
4. Meya is a company registered in the Republic of Mauritius. During 2021, it held and operated a diamond mine within the eastern part of the province of **Sierra Leone**.

5. Trustco held 65% of the shareholding in Meya through its own subsidiaries referred to as **Trustco Resources**, also registered in Mauritius, and **Trustco Resources Proprietary Ltd**, registered in Namibia. The remaining 35% of shareholding in Meya was held by Germinate, referred to in paragraph 3 above.
6. The value of the transaction referred to in paragraph 3 above, in respect of Trustco's portion, amounted to R460 000 000.00, representing 89% of Trustco's market capitalization. At the time, Trustco undertook to distribute a circular containing the full details of the transaction, incorporating a notice convening the required general meeting of Trustco's shareholders for the purpose of the approval of the Transaction.
7. However, upon investigation by the JSE, it transpired that Trustco's two wholly owned subsidiaries, namely, Trustco Resources registered in Mauritius and Trustco Resources Proprietary Ltd, registered in Namibia, had already commenced implementing the Transaction by disposing of their shareholding in Meya before Trustco had distributed a circular to shareholders and before shareholder approval could be obtained.
8. JSE found that this was contrary to the undertaking made by Trustco in its Stock Exchange News Service (SENS) announcement on 4 August 2022 and constituted a contravention of JSE Listing Requirements. SENS announcements are real-time regulatory updates and price-sensitive corporate news published by Companies listed on the JSE.
9. In addition, it was found that in its Annual Financial Statements for the year ending 31 August 2022 Trustco's shareholding in Meya through its subsidiaries had reduced from 65% to 55.75%. Furthermore, in Trustco's last published results for the year ending 31 August 2023, it was found that Trustco had confirmed that its shareholding in Meya had in fact reduced further from 55.25% to 19.5%.

10. JSE then concluded that, as a result, the Transaction whereby Trustco's shareholding in Meya had collectively reduced from 65% to 19.5% was implemented prior to the shareholders' approval. This was found to be contrary to the provisions of paragraph 9.20(b) of the Listing Requirements. This came to the attention of JSE only in March 2023. Paragraph 9.20(b) provides:

“9.20 Upon the terms of a Category 1 transaction being agreed, the issues must:

(b) within 60 days dispatch a circular to shareholders containing a notice of a general meeting to obtain their approval and any agreement affecting the transaction must be conditional upon such approval being obtained. The JSE may, in its sole discretion, extend this period provided that there is sufficient justification to do so.”

11. Paragraph 9.20(b) required Trustco, as a listed company, to immediately publish a SENS announcement upon agreeing to the terms of a transaction, dispatch a circular to shareholders within 60 days containing the full details of the transaction and a notice of a general meeting to obtain shareholders' approval, and ensure that any agreement effecting the transaction as a Category 1 transaction was conditional upon approval.
12. The contravention of paragraph 9.20 (b) of the Listing Requirements is not the subject of a dispute in these proceedings. What is in dispute before us is the sanction imposed on Trustco.
13. A Category 1 transaction applies where any percentage ratio is 30% or more, or where the total consideration is not subject to any maximum. On the other hand, paragraph 10.4 (f) (ii) of the Listing Requirements obliges an issuer proposing to enter into a related party transaction to include a statement by the board of directors confirming whether the transaction is fair insofar as the shareholders of

the issuer concerned and that the board of directors has been so advised by an independent expert acceptable to the JSE. The board of directors must obtain a fairness opinion, which must be included in the circular prepared in accordance with Schedule 5, before making this statement, unless the subject matter of a related party transaction is one of the mineral assets and a competent person's report has been prepared in accordance with section 12 of the Listing Requirements by an independent competent person and such report contains a valuation.

Did JSE err in imposing a public censure coupled with a R5 million sanction?

14. Contravention of the JSE Listing Requirements involves failure by a listed company or its directors to adhere to the rules set out by the Johannesburg Stock Exchange (JSE), which are designed to ensure fair, orderly and transparent markets. Breaches are categorised into obligations, financial reporting and market conduct.
15. Contravention may, amongst others, relate to late publication of information. This includes failing to publish information on the Stock Exchange News Service (SENS) timeously, including financial results and key personnel changes such as changes to the CEO, CFO, Company Secretary or auditor.
16. The contravention could also relate to related-party transactions. This may include concluding transactions with related parties without prior disclosure, board approval or shareholder approval required, as contemplated in paragraph 9.20 (b) referred to in paragraph 11 above.
17. In this reconsideration application, Trustco does not dispute contravention of paragraph 9.20 (b) of the Listing Requirements. As indicated in paragraph 4 of Trustco's written heads, the only question before the Tribunal is whether the sanction of R5 million, together with the public censure imposed on Trustco, is appropriate, proportionate and fair in the circumstances.

18. Put differently, did the JSE err in the exercise of its discretion? The Tribunal will only interfere with an exercise of discretion if it finds that the JSE was either biased, did not act for substantial reasons, acted capriciously in the exercise of its discretion, or reached its conclusion on a wrong principle. In ***Mwale & anor v The Prudential Authority & another***, (a reconsideration decision), this Tribunal stated as follows:

“The ordinary rule is that a higher body is not entitled to interfere with the exercise by a lower body of its discretion unless it: failed to bring an unbiased judgment to bear on the issue; did not act for substantial reasons; exercised its discretion capriciously; or exercised its discretion upon a wrong principle. There is no reason why we should not apply the same approach during an application for reconsideration.”

19. It is not our intention to revisit or rehash the principles applicable to the proper exercise of discretion. In its written heads, Trustco referred to section 167(2) of the Financial Sector Regulation Act (FSRA), which sets out factors to which a decision maker is required to have regard when determining an appropriate administrative penalty. These include the need to deter the would-be offenders and or reoffending, the degree to which the person or entity has co-operated with a financial sector regulator in relation to the contravention, and any other relevant aggravating and or mitigating factors.
20. In terms of section 167 (2) (b) of FSRA, matters to which the responsible authority must have regard to include the nature, duration, seriousness and extent of the contravention, any loss or damage suffered by any person as a result of the conduct; the extent of any financial or commercial benefit to the person, or a jurisdiction person, arising from the conduct; whether the person has previously contravened a financial sector law; the effect of the conduct on the financial system and financial stability; the effect of the proposed penalty on financial stability; and the extent to which the conduct was deliberate or reckless.

21. Whilst the JSE is not bound by the provision of section 167 (2) as it is not the responsible authority referred to therein, the factors mentioned in paragraph 20 are relevant to consider when determining an appropriate sanction for a contravention of paragraph 9.20 (b) of the Listing Requirements.
22. As correctly indicated by Trustco, in paragraph 4 of its written heads the question is whether the public censure coupled with a R5 million administrative penalty is appropriate.
23. In the alternative, Trustco seeks a reduction of the monetary penalty together with such further relief as the Tribunal may consider just and equitable.
24. JSE is blamed for not properly weighing, or at all considering, the relevant factors or otherwise. The R5 million sanction is said to be unexplained and unconnected to any relevant factor and that the imposition of the penalty is accordingly arbitrary or capricious.
25. These contentions are premised on the JSE allegedly overstating and giving undue weight to irrelevant or marginal considerations, and that the quantum of the penalty is not supported by any discernible methodology or benchmark.
26. It is necessary to examine the factual basis, if any, upon which the contentions in the preceding paragraphs are made. In dealing with what is referred to as relevant and important mitigatory factors for purposes of reconsiderations, Trustco makes mention of the difficulties with compliance, continuous market disclosure, the absence of investor harm, genuine attempts to comply, cooperation with the regulatory process, the practical and commercial context, the absence of dishonesty, fraud or market abuse, the failure to engage adequately with Trustco's mitigating submissions or factors, and that the R5 million penalty is disproportionate and unsupported by any discernible methodology.

27. We do not intend to deal with all of the above in detail. The parties have sufficiently dealt with all relevant factors in their papers and written heads of argument. It will be sufficient to deal with some salient features and the essence thereof.
28. As a starting point, the implementation of the transaction without compliance cannot serve as a mitigating factor simply because Trustco had attempted to comply but failed because of whatever challenges it was confronted with. In fact, proceeding with the implementation of the transaction in the face of non-compliance is aggravating rather than mitigating.
29. In other words, the contention in paragraph 38.8 of Trustco's written heads cannot serve as a mitigating factor. The contention is that, having discovered during March 2023 that Trustco breached the provisions of paragraph 9.20(b) of the Listing Requirements, JSE only classified the Transaction as Category 1 on 17 July 2023, more than four months later, and that given the mine's urgent capital requirements and the time taken to issue the categorisation ruling, delaying implementation pending full compliance would have jeopardised the mine and would have been commercially irrational. Trustco cannot rely on this point because, during July 2022, it had already commenced implementing the transaction.
30. What is referred to as a '*continuous market disclosure*' is also relied upon as a challenge to the imposition of the financial penalty. It is contended that the market was continuously informed of the transaction and its status between 4 August and 2 September 2024. By this stage, however, the horse had already bolted. The transaction had long been implemented without complying with the imperative in paragraph 9.20 (b) of the Listing Requirements.
31. There is a reason for the requirements of SENS announcements by entities listed in the JSE and for the information to be made available to the public in general. Openness and compliance with the Listing Requirements, such as

paragraph 9.20 (b), are critical. They are intended to ensure that everything is done above-board and consistent, and to protect shareholders, the public, investors and the integrity of the entities participating in JSE activities.

32. The suggestion that the JSE directed that a shareholders' meeting be convened to ratify the transaction, which had already been prematurely implemented, did not, in our view, diminish the serious nature of the contravention. To conclude or suggest that the contravention was not so serious because shareholders retained their voting rights and the harm was remediable is, in our view, not an excuse. It is concerning that Trustco adopted this stance. Such an approach has the potential to set a bad precedent.
33. Trustco also relies on the absence of investor harm as a sufficient mitigating factor to justify interference with the exercise of the JSE's discretion in imposing a fine of R5 million.
34. In dealing with the contention above, Trustco, amongst others, refers to the case of **Jooste v JSE Ltd (JSE4/2022)**. In this case, the Tribunal upheld two fines of R7.5 million each, being the maximum per contravention on the basis of deliberate, ongoing accounting fraud including fictitious transactions that falsely inflated subsidiary income by about R376 million, false and misleading financial statements, and conduct that caused shareholders to lose billions of rands and precipitated the collapse of one of South Africa's most prominent listed companies.
35. As correctly conceded by Trustco in paragraph 51 of its written heads, mitigating factors do not diminish the importance of compliance with the Listing Requirements. This concession should be seen in the context of the test applicable to the exercise of discretion and other factors. We are therefore unable to find that a public censure and a R5 million administrative penalty are disproportionate to the actual consequences of the breach.

36. What Trustco refers to as '*genuine attempts to comply*' cannot, in our view, justify interference with an exercise of discretion by JSE in this case. The fact that Trustco subsequently commissioned an independent comparison report which concluded that the PEA demonstrated substantial alignment with the reporting framework, does not sufficiently mitigate the serious nature of the non-compliance to justify interference with JSE's exercise of discretion.
37. The fact that Trustco is said to have demonstrated an attempt to find a workable compliance solution and thereafter proceeded, in any event, to implement the Transaction without compliance with paragraph 9.20(b) is, in our view, aggravating rather than mitigating.
38. Cooperation with the regulatory process, followed by the decision to proceed with implementation of the Transaction without shareholder approval and contrary to paragraph 9.20(b) of the Listing Requirements, is concerning. At the same time, it is speculative to suggest that such cooperation was not considered by the JSE in the exercise of its discretionary powers when imposing the penalty. In any event, the asserted cooperation occurred after implementation and after the non-compliance had already taken place.
39. Trustco further, in its written heads, deals with what it refers to as "*practical commercial context*". A statement is then made as follows: "*The transaction arose in circumstances where Meyra required substantial capital to continue the development of its mining operations. The commercial agency surrounding the funding requirements formed an important part of the factual matrix against which Trustco's conduct must be assessed*".
40. The practical and commercial context cannot be used as a defence to the contravention. Neither can it be used as a mitigating factor to find that the discretion to impose the financial penalty was not exercised properly, especially taking into account the circumstances that preceded the non-compliance and the events thereafter to date.

41. Dealing with the absence of dishonesty, fraud or market abuse, Trustco accepts that the contravention was serious and that the Listing Requirements are intended to ensure that shareholders are protected. Implementation of the Transaction had the potential to create the impression that shareholders had provided approval as envisaged in paragraph 9.20(b). It is not only the shareholders who need to be protected. Investors or potential investors also need to be protected, and the implementation of the Transaction inherently suggested approval by the shareholders when this was not the case.
42. The imposition of the R5 million penalty is criticised as being disproportionate and unsupported by a discernible methodology. It is not clear what methodology is being referred to in this regard.
43. In paragraph 68 of its written heads, Trustco refers to various aggravating considerations, including the materiality of the transaction, the duration of the non-compliance, the need for deterrence and Trustco's prior regulatory history as the basis for the sanction imposed.
44. Trustco then proceeded to make the following submissions:
- “However, they do not explain how those considerations resulted in a penalty of R5 million. No benchmark is identified, no comparative analysis is undertaken, and no reasons are provided as to why a lesser sanction would have been insufficient to achieve the objectives of deterrence and compliance”.*
45. Trustco has accepted that the contravention is serious but proceeded in any event to implement the Transaction without compliance with the imperative in paragraph 9.20 (b) of the Listing Requirements. It would be a free-for-all if the serious nature of the contravention were not reflected in the penalty imposed, as the JSE did in this case.

46. Benchmarking can never be a size-fits-all. The comparative analysis asserted by Trustco should be considered in context. It should not substitute the decision-maker's discretionary powers with another view of what would constitute an appropriate sanction. Otherwise, the established principles applicable to the exercise of discretionary powers would be undermined. The objective of the sanction is not only for deterrence. Other relevant considerations discussed in the preceding paragraphs must also be taken into account.
47. Comparison of the R5 million penalty in the present case with the administrative penalty of R161.6 million that was set aside by this Tribunal in *Jooste v FSCA* (A64/2020) is simply too far removed to provide a meaningful basis for comparison. In the circumstances, it cannot be said that the imposition of the R5 million penalty is irrational.
48. Prior breaches contended by Trustco to be of no consequence to the penalty imposed cannot be correct. The fact that the previous breaches arose in an entirely different regulatory context cannot render them irrelevant for purposes of considering an appropriate sanction for contravention of paragraph 9.20(b) of the Listing Requirements. The fact that those breaches involved different provisions of the Listing Requirements did not, in our view, render the current breach irrelevant to the previous contraventions or breaches.
49. The suggestion that strict compliance with paragraph 9.20 (b) was impossible and this was ignored by JSE, insofar as it is intended to be relied upon as a misdirection, must be rejected. The contention by Trustco is that it was impossible to obtain the Competent Person Report (CPR) required in terms of paragraph 10.4 of the Listing Requirements referred to in paragraph 13 above, has no basis.
50. Before making this contention, Trustco had already indicated to the JSE that it did not comply with the CPR requirement because it considered such a requirement unnecessary. Trustco cannot have it both ways. As intimated by

the JSE, the breach occurred long before the issues regarding CPR and the Preliminary Economic Assessment Report (PAE) arose.

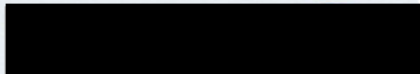
51. The contention that Trustco acted transparently and in good faith is refuted by the JSE. According to the JSE, the evidence demonstrates that Trustco knowingly breached the imperative in paragraph 9.20 (b). It is contended that Trustco did so by attempting to bypass its duty when it sought to obtain an undertaking from the majority shareholders to the exclusion of the minority shareholders. We cannot differ with this contention. Therefore, Trustco's contention that it breached its duty simply because its board thought that the commercial upside justified its conduct must fall by the wayside.
52. In conclusion, Trustco's contention that the sanction decision is grossly disproportionate to the contravention, irrationally punitive, and inconsistent with the proper exercise of the decision maker's discretion is found to have no merit. The application for reconsideration is destined to be dismissed.

ORDER

53. Consequently, an order is hereby made as follows:

"The application for reconsideration is hereby dismissed.

Signed on 20 August 2026



Legodi J (Chair of the panel)