



OUTA

ORGANISATION UNDOING TAX ABUSE

TRANSNET

**TRANSNET SECOND
DEFINED BENEFIT FUND**

**OUTA'S SUBMISSION TO THE
JUDICIAL COMMISSION OF
INQUIRY INTO STATE
CAPTURE**



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INTRODUCTION

1. In this chapter, we shall detail how Gupta linked companies:
 - 1.1. Acquired contracts with Transnet Second Defined Benefit Fund and Transnet,
 - 1.2. Used this influence to gain access to certain funds,
 - 1.3. Misappropriated said funds,
 - 1.4. Utilised the misappropriated funds to further state capture and the beneficiaries thereof.
2. This conduct, and the surrounding circumstances, would not have been possible without wide-spread corruption and unethical behaviour within and between private businesses, SOEs and the highest echelons of government.
3. Accordingly, we humbly request that the State Capture Inquiry consider these allegations and the evidence annexed.

SYNOPSIS

4. The capture and abuse of Transnet was not only limited to the entity itself but grew to encompass the Transnet Second Defined Benefit Fund (“the Fund”), a retirement fund established in terms of Transnet Pension Fund Act, 1990.

5. On or about 10 August 2018, the Fund lodged a claim for damages against the Directors of Regiments Capital Propriety Limited (“Regiments Capital”), Trillian Capital Partners Propriety Limited (“Trillian”) and Albatime Propriety Limited (“Albatime”).
6. OUTA has come into possession of the Combined Summons, the initial Particulars of Claim and the Amended Particulars of Claim, annexed hereto as **ANNEXURE ENQ1** and **ENQ2** respectively.
7. OUTA does not possess much of the evidence upon which the aforementioned Particulars of Claim are based. However, the evidence we do possess, together with the greater context surrounding state capture indicates that the Fund’s allegations are worth the attention of the State Capture Inquiry.
8. The annexures marked ENQ1.1 – ENQ1.11 have been extracted from the particulars of claim and the amended particulars of claim for ease of reference.
9. The content of the aforementioned documents indicates that the Directors of Regiments Capital, Trillion and Albatime misappropriated funds from the Transnet Second Defined Benefit Fund account under the management of Regiments Fund Manager, a subsidiary of Regiments Capital. These funds were then used to further state capture in respect of Eskom.

THE DEFINITION OF STATE CAPTURE

10. OUTA construes the definition of state capture as follows:

*“...a situation where powerful individuals, institutions, companies or groups within or outside a country use corruption to shape a nation’s policies, legal environment and economy to benefit their own private interest”.*¹

(Own emphasis added).

11. This chapter attempts to illustrate the vast and seemingly unfettered influence that the masterminds of state capture wielded in respect of South Africa’s state-owned entities (“SOEs”).²

12. In particular, this chapter intends to identify the means by which the Regiments and Trillian Companies were used as vehicles to further state capture in respect of Transnet, the Fund and Eskom.

KEY ROLE PLAYERS INVOLVED IN THE CAPTURING OF TRANSNET

13. The following discussion aims to illustrate the key role players involved in state capture and attempt to draw the nexus between such individuals and provide a

¹ Chene M, “*State Capture: An Overview*”, 11 March 2014.

² Ibid.

complete picture relating to the Gupta Family and/ or Gupta related companies or connections.

REGIMENTS CAPITAL (PTY) LTD³

14. Regiments Capital (Pty) Ltd hereinafter referred to as Regiments Capital, is a private company incorporated under the laws of the Republic of South Africa, with registration number 2005/014462/07 and whose principle place of business is situated at 35 Ferguson Road, Illovo, Johannesburg.
15. The issued share capital as was held, during the relevant time period in question, were:
 - 15.1. **33%** by the Pillay Family Trust which was founded by Magandheran N Pillay and of which Pillay is a trustee and beneficiary;
 - 15.2. **32%** by the Zara Share 1 Trust which was founded by Eric A Wood and of which Wood is a trustee and beneficiary;
 - 15.3. **20%** by the Nyhonyha Family Trust which was founded by Litha M Nyhonyha and of which Nyhonyha is a trustee and beneficiary; and,
 - 15.4. **15%** by Litha M Nyhonyha.
16. The following people were the directors during the relevant time period in question:

³ See ENQ1, ad paragraph 2, pg. 1.

- 16.1. Litha M Nyhonyha;
- 16.2. Magandheran N Pillay; and,
- 16.3. Eric A Wood.

REGIMENTS FUND MANAGERS (PTY) LTD⁴

17. Regiments Fund Managers (Pty) Ltd hereinafter referred to as Regiments Fund Managers, is a private company incorporated under the laws of the Republic of South Africa, with registration number 2004/023761/07 and whose principle place of business is situated at 35 Ferguson Road, Illovo, Johannesburg.
18. They are also a registered financial services provider for purposes of the Financial Advisory and Intermediary Services Act No. 37 of 2002 and thus a financial institution as defined by the Financial Services Board Act No 97 of 1990.
19. Regiments Fund Managers is a wholly owned subsidiary of Regiments Capital and had the following directors during the relevant time period in question:
 - 19.1. Litha M Nyhonyha;
 - 19.2. Magandheran N Pillay; and,
 - 19.3. Eric A Wood.

⁴ See ENQ1, ad paragraph 3, pg. 2.

REGIMENTS SECURITIES LTD⁵

20. Regiments Securities Ltd hereinafter referred to as Regiments Securities, is a public company incorporated under the laws of the Republic of South Africa, with registration number 2004/017466/06 and whose principle place of business is situated at 35 Ferguson Road, Illovo, Johannesburg.

21. Regiments Fund Managers is a wholly owned subsidiary of Regiments Capital and had the following directors during the relevant time period in question:

21.1. Litha M Nyhonyha;

21.2. Magandheran N Pillay; and,

21.3. Eric A Wood.

22. In short, although the Regiment companies, as listed above, are separate entities, they are owned, alternatively managed, alternatively have the same interested individuals being – Litha M Nyhonyha, Magandheran N Pillay and Eric A Wood.

TRILLIAN CAPITAL PARTNERS (PTY) LTD⁶

23. Trillian Capital Partners (Pty) Ltd, hereinafter referred to as Trillian Capital Partners, is a private company incorporated under the laws of the Republic of South Africa, with registration number 2015/111759/07 and whose principle

⁵ See ENQ1, ad paragraph 4, pg. 3.

⁶ See ENQ1, ad paragraph 6, pg. 4.

place of business is situated at 4th Floor, 23 Melrose Boulevard, Melrose Arch, Gauteng.

24. The issued share capital as was held, during the relevant time period in question, were:

24.1. **25%** by Zara W (Pty) Ltd of which Eric A Wood is the sole director and which in turn is wholly owned by the Zara Family Trust;

24.2. **60%** by Trillian Holdings (Pty) Ltd, of which Salim Essa is the sole director and shareholder;

24.3. **15%** by unknown persons.

25. Trillian Capital's board of directors consist of Eric A Wood and one Tebogo Leballo.

TRILLIAN FINANCIAL ADVISORY (PTY) LTD⁷

26. Trillian Financial Advisory (Pty) Ltd hereinafter referred to as Trillian Financial Advisory, is a private company incorporated under the laws of the Republic of South Africa, with registration number 2014/1222082/07 and whose principle place of business is situated at 4th Floor, 23 Melrose Boulevard, Melrose Arch, Gauteng.

⁷ See ENQ1, ad paragraph 7, pg. 4.

27. Trillian Financial Advisory is a wholly owned subsidiary of Trillian Capital and had the following directors during the relevant time period in question:

27.1. Eric A Wood;

27.2. Tebogo Leballo; and,

27.3. Anushka Wood (Eric A Wood's sister-in-law).

TRILLIAN ASSET MANAGEMENT (PTY) LTD⁸

28. Trillian Asset Management (Pty) Ltd hereinafter referred to as Trillian Asset Management, is a private company incorporated under the laws of the Republic of South Africa, with registration number 2008/023108/07 and whose principle place of business is situated at 4th Floor, 23 Melrose Boulevard, Melrose Arch, Gauteng.

29. Trillian Asset Management is a wholly owned subsidiary of Trillian Capital and had the following directors during the relevant time period in question:

29.1. Eric A Wood; and,

29.2. Tebogo Leballo.

⁸ See ENQ1, ad paragraph 8, pg. 5.

TRILLIAN MANAGEMENT CONSULTING (PTY) LTD⁹

30. Trillian Management Consulting (Pty) Ltd hereinafter referred to as Trillian Management Consulting, is a private company incorporated under the laws of the Republic of South Africa, with registration number 2015/111709/07 and whose principle place of business is situated at 4th Floor, 23 Melrose Boulevard, Melrose Arch, Gauteng.

31. Trillian Management Consulting is a wholly owned subsidiary of Trillian Capital and had the following directors during the relevant time period in question:

31.1. Eric A Wood; and,

31.2. Tebogo Leballo.

32. In short, although the Trillian companies, as listed above, are separate entities, they are owned, alternatively managed, alternatively have the same interested individuals being –EA Wood and T Leballo.

ALBATIME (PTY) LTD¹⁰

33. Albatime (Pty) Ltd hereinafter referred to as Albatime, is a private company incorporated under the laws of the Republic of South Africa, with registration

⁹ See ENQ1, ad paragraph 9, pg. 5.

¹⁰ See ENQ1, ad paragraph 11, pg. 6.

number 2009/021474/07 and whose principle place of business is situated at Block 805, 1st Floor Hammete Crossin, 2 Selborne Avenue, Fourways, Gauteng.

34. The sole director of Albatime is one Kubentheran Moodley, a close business associate of Salim Essa.

ERIC ANTHONY WOOD¹¹

35. Eric Wood is an adult with identity number 6305225020087, who was employed by one or more of the Trillian Companies.
36. Wood was a director of each of the companies falling under the Regiments umbrella (“the Regiments Companies”) until 29 February 2016.
37. From 1 March 2016, he was a director of each of the companies falling under the Trillian umbrella (“the Trillian Companies”).
38. Wood is the founder, a trustee and a beneficiary of the Zara Family Trust, of which the only other beneficiaries are members of Wood’s family.
39. The Zara Family Trust holds 32% of the issued share capital of Regiments Capital and (through the holding company Zara W (Pty) Ltd) 25% of the issued share capital of Trillion Capital Partners.

¹¹ See ENQ1, ad paragraph 13, pg. 7.

40. Trillian Capital Partners is one of the entities which contributed to the purchase price of Optimum Coal Holdings Proprietary Limited (“OCH”).

MAGANDHERAN (“NIVEN”) PILLAY¹²

41. Magandheran (“Niven”) Pillay, is an adult with identity number 6604025118087 (“Pillay”), a director of Regiments Companies as mentioned above and acted as the group chairman of Regiments Fund Managers when the Fund Management Agreements were concluded as discussed below.
42. Pillay is a founder, trustee and beneficiary of the Pillay Family Trust, which has an interest in Regiments Capital.
43. The Pillay Family Trust, which includes Pillay’s wife (Ishana Pillay) and Pillay’s children and all other persons who are descendants of Pillay, has an interest in Regiments Capital through the Pillay Family Trust.

LITHA MVELISO NYHONYHA¹³

44. Litha Mveliso Nyhonyha, is an adult with identity number 5903155902083 and a director, partial owner and employee of the Regiments Capital as set out above.

¹² See ENQ1, ad paragraph 14, pg. 9.

¹³ See ENQ1, ad paragraph 15, pg. 10.

45. Nyhonyha is a founder, trustee and beneficiary of the Nyhonyha Family Trust, which has a 20% interest in Regiments Capital.
46. Nyhonyha performed duties on behalf of Regiments Fund Managers, whilst in its employ, in relation to the assets of the TSDBF.

TEBOGO LEBALLO¹⁴

47. Tebogo Leballo is an adult, with identity number 8006135333085, director and employed by one or more of the Trillian Companies. Prior to 1 March 2016, he was employed by Regiments Capital.
48. Leballo performed duties on behalf of Regiments Fund Managers, whilst in its employ, in relation to the assets of the TSDBF and was employed by one of the Trillian Companies.

KUBENTHERAN MOODLEY¹⁵

49. Kubentheran Moodley is an adult male with identity number 7108075115083 residing at 22 Robert Crescent, Morningside Village, Sandton.

¹⁴ See ENQ1, ad paragraph 16, pg. 11.

¹⁵ See ENQ1, ad paragraph 17, pg. 12.

50. Moodley was the sole director of Albatime and a special advisor to the then Minister of Mineral Resources, Mr Mosebenzi Zwane.

51. Moodley is married to a former Eskom board member Ms Viroshini Naidoo. Ms Viroshini Naidoo, in her declaration of interests to Eskom dated 19 February 2016 and 31 May 2016, lists herself as an employee of Albatime.¹⁶

SALIM ESSA¹⁷

52. Salim Essa, is an adult male with identity number 7801155017084, was the sole director of Trillian Holdings, which held 60% of the issued share capital for Trillian Capital Partners.

53. Essa was also the sole director of Elgasolve (Pty) Ltd, which owned 21.5% of Tegeta.

¹⁶ Public Protector Report 6 of 2016/2017: *State of Capture Report No: 6 of 2016/2017*, ad paragraph 5.308, pg. 270.

¹⁷ *Supra* at paragraph 54.2 (e), pg 112.

MISAPPROPRIATION: THE TRANSNET SECOND DEFINED BENEFIT FUND

THE PORTFOLIO MANAGEMENT AGREEMENTS

54. On or about 1 October 2015, the Fund and Regiments Fund Managers concluded two Portfolio Management Agreements (“PMAs”) in terms of which the Fund appointed Regiments Financial Managers as the fund manager in respect of the portfolio assets set out in the aforementioned portfolio management agreements.
55. Copies of the PMAs have been extracted from the pleadings filed by the Fund and are annexed hereto as **ANNEXURE ENQ1.1** and **ENQ1.2** respectively.
56. It would seem as if the Fund was represented by one PJJ Maritz (position unclear) and Regiments Fund Managers were represented by M Pillay.¹⁸
57. The Fund asserts that the PMAs were concluded after a procurement process¹⁹ in which:
- 57.1. The Fund invited Regiments Financial Managers to express an interest in tendering for the provision of discretionary investment management services.

¹⁸ See ENQ 1.1, ad pg 43 and See ENQ 1.2, ad pg 42.

¹⁹ See ENQ 2, ad paragraph 19, pg 14 & 15.

57.2. On 28 July 2014, the Fund issued a Request for Quotation and subsequently invited Regiments Financial Managers to submit a detailed proposal.

57.3. On 4 August 2014, Regiments Financial Managers responded to the Request for Quotation. The written proposal that Regiments Financial Managers submitted was signed by Pillay and detailed the roles of he, Wood and Nyhonyha.

57.4. Pillay, in his capacity as the executive group chairman, was to have responsibility over the governance of Regiments Fund Managers.

57.5. Wood, in his capacity as an executive director, was to have responsibility over investment strategies and portfolio positioning.

57.6. Nyhonyha, in his capacity as an executive director, was to have responsibility over management strategies.

58. On or about 14 August 2014, the Fund resolved to appoint Regiments Financial Managers as the fund manager for a portfolio of its assets.²⁰

59. The portfolio management agreements are the same in all material aspects aside from:

59.1. The portfolio assets and liabilities;

59.2. Outperformance fees; and,

59.3. Termination fees.

60. In terms of clause 6.1 of the PMAs, Regiments Financial Managers was authorised to operate and have access to a “Designated Account” (the TSDBF

²⁰ See ENQ2, ad paragraph 20, pg. 15.

Designated Account), for the purposes of managing the portfolio and providing the services it had been contracted to perform.

61. The TSDBF Designated Account was account number 1118817079 held at and operated by the Fund through Nedbank Ltd.²¹
62. The account was opened to hold the capital that formed part of the portfolio assets whilst it is not invested.
63. On or about 1 August 2016, the Fund gave Regiments Financial Managers notice to terminate the PMAs and the agreements were terminated on 30 September 2016.²²

THE SWAP TRANSACTIONS

64. According to the pleadings filed on behalf of the Fund, Wood and other unknown persons, advised **Transnet** during June 2015 to April 2016, in regard to:
 - 64.1. The raising of a R12 billion club loan (the “Club Loan”)²³; and,
 - 64.2. Hedging Transnet’s interest rate risk in relation to the abovementioned Club Loan and another R6.992 billion loan by means of interest rate swap transactions.²⁴

²¹ See ENQ2, ad paragraph 25, pg. 26.

²² See ENQ2, ad paragraphs 26 & 27, pg. 26.

²³ See ENQ2, ad paragraph 34.1, pg. 29.

²⁴ See ENQ2, ad paragraph 34.2, pg. 29.

65. During the similar period, October 2015 to April 2016, Regiments Financial Managers (through Nyhonyha and/ or Pillay and/ or Wood) negotiated and executed ten “*amortising interest rate swap transactions*” in four tranches on behalf of the Fund.²⁵
66. In the first two tranches, the counterparty to the Fund was allegedly Nedbank Limited (“Nedbank”) and the swap transactions were put in place alongside interest rate swap transactions that had been concluded between Nedbank and Transnet.
67. This was allegedly arranged to pass the hedging risk that Nedbank had assumed in its corresponding swap transactions with Transnet onto the Fund.²⁶
68. The last two tranches were purportedly concluded to hedge Transnet’s interest rate risk in relation to the Club Loan and a loan of R6.992 billion (as mentioned above).²⁷
69. The Fund states that although all the above-mentioned swap transactions were concluded by Regiments Financial Managers, purportedly in terms of its mandate prescribed by the PMAs, the mandate did not authorise Regiments Financial Managers to enact the swap transactions. The Fund alleges that Regiments Financial Managers had exceeded its authority by doing.²⁸

²⁵ See ENQ, ad paragraph 37, pg. 32.

²⁶ See ENQ2, ad paragraph 38.1, pg. 33.

²⁷ See ENQ2, ad paragraph 39, pg. 33.

²⁸ See ENQ2, ad paragraph 40, pg. 34.

70. During the period May 2016 to June 2016, the Fund ratified all the Nedbank swap transactions, despite their later assertion that the swap transactions had been concluded without its authority.²⁹
71. During the period July 2016 to September 2016, the Fund renegotiated and signed the swap transactions Regiments Financial Managers had purported to conclude on its behalf.³⁰

PAYMENT OF THE TRANSNET TRANSACTION FEES

72. During the period 4 December 2015 to 11 April 2016, Regiments Financial Managers caused a total amount of R228,980,985.00 (two hundred and twenty-eight million nine hundred and eighty thousand nine hundred and eighty-five rand) to be transferred from the TSDBF Designated Account to Regiments Securities Propriety Limited (“Regiments Securities”) as transaction fees purportedly owed by Transnet for services in relation to the swap transactions concluded in respect of Transnet’s R6.992 billion- and Club Loans.³¹ This was clearly contrary to purpose of the account as the account was opened to hold the capital that formed part of the portfolio assets whilst it is not invested.

²⁹ See ENG2, ad paragraph 41A, pg. 36.

³⁰ See ENQ2, ad paragraph 41.B, pg. 38 & 39.

³¹ See ENQ2, ad paragraph 42, pg.40.

73. The pleadings filed on behalf of the Fund sets out a detailed breakdown of all amounts transferred by Regiments Financial Managers from the TSDBF Designated Account to Regiments Securities.³²
74. The Fund asserts that the abovementioned fees were not owed by itself or by Transnet and the Regiments Financial Managers did not have the authority to pay said fees.³³
75. After receiving payment, Regiments Securities then paid out a total sum of R50,684,384.72 to Albatime. A detailed breakdown of all payments is set out in the pleadings filed by the Fund and attached hereto.³⁴
76. From the pleadings filed by the Fund, Regiments Securities also paid a total sum of R179,543,257.21 to one or more Trillion Companies in respect of several invoices tendered by the companies. A detailed breakdown of all payments is set out in the pleadings filed by the Fund and attached hereto.³⁵
77. The Fund asserts that Regiments Securities did not have the authority to conclude the above-mentioned transactions.³⁶

³² See ENQ2, ad paragraph 43, pg. 40.

³³ See ENQ2, ad paragraphs 44 – 44.3, pg. 40 & 41.

³⁴ See ENQ2, ad paragraph 46, pg. 42 & 43.

³⁵ See ENQ2, ad paragraph 46.2, pg. 43 & 44.

³⁶ Seen ENQ2, ad paragraph 47, pg. 44.

THE CONTRIBUTION TOWARDS THE PURCHASE OF OPTIMUM COAL HOLDINGS

78. During the period 1 July 2015 to 10 December 2015, Tegeta Exploration and Resources Proprietary Limited (“Tegeta”) negotiated and concluded an agreement with Optimum Coal Holdings Proprietary Limited (“OCH”), Glencore International AG (“Glencore”) and Oakbay Investments Proprietary Limited (“Oakbay”) for the purchase by Tegeta of all the issued shares held by OCH in Optimum Coal Mine (“OCM”) and other assets, for R2.15 billion.³⁷
79. The ownership of Tegeta, and the interest of the Gupta family, Duduzane Zuma and Salim Essa has been adequately explored by the State of Capture Report³⁸ and is reiterated in another submission³⁹ made by OUTA to the Commission.
80. When the aforementioned agreement with OCH was concluded, OCH was indebted to a Loan Consortium consisting of Rand Merchant Bank (a division of FirstRand Bank Limited) Investec Bank Limited and Nedbank Limited, in the amount of approximately R2.95 billion.⁴⁰
81. In terms of the agreement between Tegeta and OCH, the purchase price for the shares held by OCH in OCM was to be paid to the Loan Consortium.⁴¹

³⁷ See ENQ2, ad paragraph 70A, pg. 49.

³⁸ Public Protector Report 6 of 2016/2017: *State of Capture Report*, ad paragraph 5.42, pg. 111.

³⁹ OUTA submission on Eskom submitted to the Commission during September 2018.

⁴⁰ Public Protector Report 6 of 2016/2017: *State of Capture Report*, ad paragraph 5.316, pg. 271.

⁴¹ See ENQ2, ad paragraph 70C.1, pg. 50.

82. On or about 4 March 2016, the Bank of Baroda issued an untitled letter to FirstRand Bank limited setting out that Tegeta was its client and that it would affect payment of R2.15 billion on certain conditions.⁴²

83. The Public Protector has noted that her financial analysis confirms that the Bank of Baroda did not grant a loan amounting to R2.15 billion to Tegeta for the purchase of OCH. Instead, Tegeta raised the funds to pay the Loan Consortium from various sources.

84. It would seem that the funds were deposited via at least thirty-two electronic funds transfers between 9 December 2015 and 14 April 2016 into the Bank of Baroda.⁴³

85. On or about 14 April 2016, the Bank of Baroda effected payment on behalf of Tegeta into the Escrow Account held by Werksmans Incorporated.⁴⁴

86. During the period 11 December 2015 and 14 April 2016, the following amounts, forming part of a total sum of R2,478,639,309.00⁴⁵, were paid to Werksmans Incorporated by the Bank of Baroda⁴⁶:

86.1. **R10,000,000.00** contributed by Albatime;

86.2. **R40,000,000.00** contributed by Regiments Capital;

86.3. **R95,639,309.00** contributed by Trillian Advisory;

⁴² Public Protector Report 6 of 2016/2017: *State of Capture Report*, ad paragraph 5.321, pg. 273.

⁴³ Public Protector Report 6 of 2016/2017: *State of Capture Report*, ad paragraph 5.324, pg. 273.

⁴⁴ Public Protector Report 6 of 2016/2017: *State of Capture Report*, ad paragraph 5.324, pg. 273.

⁴⁵ Public Protector Report 6 of 2016/2017: *State of Capture Report*, ad paragraph 5.333, pg. 275.

⁴⁶ See ENQ2, ad paragraph 70C.4, pg. 51.

86.4. **R74,784,000.00** contributed by Trillian Asset Management;

86.5. **R65,000,000.000** contributed by Trillian Capital Partners.

87. The above-mentioned amounts were paid into a Nedbank Business Account, held by the Bank of Baroda, with number 1454095326 (“Account Number 1454095326”), in favour of Tegeta.⁴⁷

88. On or about 14 April 2016, a further R160,246,000.00 was transferred to Account Number 1454095326 in favour of Tegeta.

89. It would seem, from the pleadings filed by the Fund, that at least two payments were made into Account Number 1454095326 to the benefit of Tegeta and which funds were seemingly sourced from the TSDBF Designated Account –

89.1. The first was a payment ostensibly made to Albatime in the amount of R42,000,000.00 in terms of the invoice dated 7 December 2015 issued to Regiments Capital (Pty) Ltd in respect of a project called “*Transnet Capital Projects*”.⁴⁸

89.2. The second was a payment ostensibly made to Trillian Financial Advisory in the amount of R38,456,955.00 in terms of the invoice dated 13 April 2016 issued to Regiments Securities in respect of “*Execution of interest rate swap*”.⁴⁹

⁴⁷ See ENQ2, ad paragraph 70C.5, pg. 51.

⁴⁸ See ENQ1.4 and ENQ2, ad paragraph 70F.1, pg. 52.

⁴⁹ See ENQ1.10 and ENQ2, ad paragraph 70F.2, pg. 53.

89.3. It appears that the above-mentioned invoices rendered reflected the same bank account number as that of Tegeta and the other Gupta owned companies.

90. In order to better understand the relevance of the payments, the relevant relationships and ownership of Tegeta need to be explained. Tegeta's ownership comprises of⁵⁰ -

90.1. **29.05%** owned by **Oakbay Investments (Pty) Ltd**;

90.1.1. Oakbay Investments (Pty) Ltd owns the majority shares **Oakbay Resources and Energy Ltd**.

90.1.1.1. **Atul Gupta** owns the majority shares in Oakbay Resources and Energy Ltd through his respective shareholding in **Oakbay Investments (Pty) Ltd** and **Islandsite Investments 18015 (Pty) Ltd**.

90.2. **28.53%** owned by **Mabengela Investments (Pty) Ltd**;

90.2.1. **Mabengela Investments (Pty) Ltd** in turn is owned by Duduzane Zuma, Rajesh Kumar Gupta, Aerohaven Trading (Pty) Ltd, Fidelity Investment, Mfazi Investments (Pty) and Ashu Chawla.

90.3. **21.5%** owned by **Elgasolve (Pty) Ltd**;

⁵⁰ ⁵⁰ Public Protector Report 6 of 2016/2017: *State of Capture Report*, ad paragraph 5.42b, pg. 112

90.3.1. The sole director of Elgasolve is Salim Aziz **Essa**.

90.4. **12.91%** owned by **Fidelity**; and

90.5. **8.01%** owned by **Accurate Investments Ltd**.

91. In recent court proceedings it was established that Bank of Baroda used one Nedbank Account to manage alternatively held all funds deposited by its clients. Effectively this meant that funds deposited in favour of Tegeta by any company were merged into one account referred to as the “pool account”.⁵¹
92. What this further mean is that any company banking with Bank of Baroda would have the same banking details as Tegeta which renders it an ideal money laundering vehicle.
93. Whilst we do not explore the relationship between Eskom and Trillian in detail in this submission, it must be noted that Mckinsey & Company allegedly subcontracted Trillian as part of its work with Eskom during September 2015. Invoices between Eskom and Trillian suggest that this relationship may have been even older.⁵²

⁵¹ Unreported case - The ex parte application of: THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS case number 1540/2018, Free State High Court

⁵² *Betrayal of the Promise: How South Africa is Being Stolen*, May 2017, pg. 29. Available online at: <http://pari.org.za/wp-content/uploads/2017/05/Betrayal-of-the-Promise-25052017>.

94. It thus seems likely that the Regiments and Trillian Companies were advising both Eskom, Transnet and the Fund at the time the money was withdrawn from the Fund and used to contribute towards the purchase of OCH.

CONCLUSION

95. In summary, the Fund alleges that after they appointed Regiments Financial Managers to manage the TSDBF Designated Account holding certain portfolio assets, Regiments Financial Managers:

95.1. Abused its authority to enact swap transactions that were detrimental to the Fund, but beneficial for Transnet;

95.2. Misappropriated money from the TSDBF Designated Account and transferred such to Regiments Securities, a subsidiary of Regiments Capital;

95.3. Regiments Securities then paid this money on to Albatime and various Trillion Companies, who in turn used said money to contribute towards the purchase of OCH by Tegeta.

96. It must be kept in mind that during the Period June 2015 to April 2016, in which the above-mentioned swap transactions were enacted:

96.1. Regiments Capital was also employed in an advisory capacity by Transnet in respect of the swap transactions⁵³,

96.2. Brian Molefe, Anoj Singh and Richard Seleke, whose links to the Gupta family are now well established, were members of the Board of Transnet until the former two individuals resigned in September 2015 and the latter in November 2015.

97. It must further be noted that Salim Essa maintained a direct interest in the Trillian Companies through his majority shareholding of Trillian Capital and an indirect interest in the work performed by Regiments Capital through Eric Wood and Tebogo Leballo, who left the latter to join the former in 1 March 2016.

98. Wood's exit from Regiments Capital was subsequent to the negotiation of an agreement between him and Regiment's Capital which would have involve, *inter alia*, the transfer of advisory business to him from the latter. This agreement ("the Navigator Agreement), is annexed hereto as **ENQ1.11**.⁵⁴

99. There is current litigation on the abovementioned Navigator Agreements between the Regiment Companies and interested parties and Eric Wood, the Trillian Companies and other parties.

⁵³ See ENG2, ad paragraph 48, pg. 45.

⁵⁴ Lith Mveliso Nyhonyha and eight others vs Eric Anthony Wood and five others, High Court of South Africa, Johannesburg, case number: 35530/2016.

100. The nature of the transaction of the Fund's money and the close relationships between the various companies and individuals involved indicates that Transnet, the Fund and Eskom have been victims of state capture.