

Novus Holdings Limited

Attention: Dr Phumla Mnganga / Mr Neil Birch / Ms Melonie Brink

By email: phumla@telkomsa.net / neil.birch@novus.holdings / melonie.brink@novus.holdings

And to: **Mr Harry Todd**
Ms Keshree Alwar
Mr Dennis Mack
Ms Noluvuyo Mkhondo
Mr Christoffel Botha
Ms Lulama Mtanga
Ms Sandile Zungu
By email: info@novus.holdings

7 April 2020

Dear Sirs

In re: Request for full response prior to instituting section 162 application arising from Commission Agreement between Novus Holdings Limited and Lebone Litho Printers (Proprietary) Limited

1. We represent Caxton & CTP Publishers & Printers Limited (“**Caxton**”), which is a minority shareholder in Novus Holdings Limited (“**Novus**”).
2. We have been instructed to address this letter to the board of Novus on behalf of Caxton, in its capacity as a shareholder of Novus. (We request that the company secretary of Novus ensure that this letter is circulated to every member of the Novus board.) This letter serves to provide the Novus board with a final opportunity to furnish Caxton with a full and urgent response in relation to the serious issues our client has recently placed before the Novus board of directors, which have not been denied. You are further advised that in the absence of a timely, full and adequate explanation and response, Caxton has instructed us to institute an application under section 162 of the Companies Act 71 of 2009 (“**the Companies Act**”), to declare the directors of Novus delinquent on the basis of a breach of their fiduciary duties. This letter excludes the matters raised

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Company Registration Number: 2009/006902/21 VAT Registration Number: 4510252580



under section 165 (2) of the Companies, which we have addressed to you under a separate letter of even date.

3. To provide the basis for the request for a full and adequate explanation and response prior to the institution of section 162 proceedings under the Companies Act, we begin by setting out a summary of the facts and circumstances arising from prior correspondence between Caxton and Novus. For ease of reference, we attach a bundle of the relevant correspondence in chronological order, marked “A”.

Background

4. On 29 August 2019, Caxton, in its capacity as a shareholder of Novus, addressed a letter to Novus requesting that certain questions be addressed at the Novus AGM that was to take place the following day. Caxton stated that it did not wish to impede the process of the AGM and therefore requested that the questions be framed by the independent Chairman on behalf of Caxton, and addressed to the appropriate persons. Caxton raised, *inter alia*, the following questions in the letter:
 - a. *Does Novus or any consortium of which Novus is a part, pay commissions of any sort to any person in connection with tenders or contracts for government work or work from foreign governments awarded to Novus or in respect of which Novus is contracted to undertake printing, or has it in the last five years paid such commissions? To the extent such commissions are paid or have been paid, are these commissions disclosed to the parties awarding the tenders concerned and are the commissions specifically disclosed to and approved by the Board of Novus?”*
 - b. *“Have any current or previous senior executives of Novus or persons related to them, to the knowledge of Novus, benefitted from any commissions that may have been paid, as referred to in the previous question?”*

5. Novus responded the same day stating, *inter alia*, that it did not consider the questions raised by Caxton to be appropriate to be raised at an AGM. However, Novus responded to the questions in a letter and indicated that the responses would be presented at the AGM.
6. In response to the first question (set out, above, in para 4(a)), Novus said the following:

“Question is a bit convoluted, – we do from time to time work with various consortium partners and sub contractors in tenders – we may pay commission/fees to those parties with whom we have entered into formal contracts with. The processes are transparent and in line with our internal governance policies which are approved at board.

With regard to disclosure these types of disclosures if required are regulated by the tender conditions - if contained, Novus would comply with such disclosure requirements.”
7. In response to the second question (set out, above, in para 4(b)) regarding whether any current or previous Novus executives or persons related to them benefitted from any of the commissions referred to in the first question, Novus responded: *“To the best of our knowledge no.”*
8. Novus added a final paragraph stating that it was *“alarmed by some of the questions raised by a shareholder and we would certainly welcome more information from yourself in order for us to investigate these thoroughly.”* Novus requested a written response from Caxton.
9. On 30 August 2019, Caxton responded to Novus. In response to the portion of Novus’s letter relating to the commission payments, Caxton stated in paragraph 3 of its letter that *“[y]our response in relation to the question of commission payments is noted including your confirmation that the commissions which I refer to, are indeed paid. In this regard and especially where the contracts concerned relate to public and governmental tenders, it is vital that there should be complete and transparent disclosure of the amounts involved and the identity of persons to whom such commissions are paid. This is especially important given that at least one such commission paid is in the order of magnitude of hundreds of millions of rands. We request that you provide shareholders at the AGM today, with the board assurance that it is aware thereof and accepts*



responsibility for all such payments and has made full disclosure to the contracting parties, in all cases.”

10. Caxton also stated that it noted the concern expressed in relation to the nature of Caxton’s questions and was prepared to engage with Novus further in this regard.
11. On the same date, Novus replied by email to Caxton. In response to paragraph 3 of Caxton’s letter, Novus stated that it does not consider this to relate to business to be transacted at an AGM and “*will advance the discussion on the matter in an appropriate forum*”. We are instructed that the issue was accordingly not raised at the AGM.
12. We are instructed that Caxton subsequently heard nothing further from Novus. Despite its undertaking to advance the discussion regarding the issue of commission payments in an appropriate forum, Novus appears to have taken no further steps in this regard.
13. Having subsequently become aware of additional information pertaining to the issues previously raised by Caxton, on 25 March 2020, Caxton addressed a further letter to Novus. The letter was addressed to Dr Mnganga, Mr Birch and Ms Brink, in their capacities as Novus’ chairperson and non-executive director, Novus’ CEO, and Novus’ Company Secretary, respectively. In the letter, Caxton provided further detail that had come to its attention in the period since it initially addressed correspondence to Novus in August 2019. In the letter, Caxton stated that it wished to bring to the attention of the Novus board, the factual and legal position in relation to the commission agreement, as Caxton understood it. Caxton provided the following information in the letter and indicated as follows:
 - a. Caxton understands that Novus has a commission agreement in place with Lebone Litho which relates, *inter alia*, to the government workbook tender contract from 2016 onwards (including renewals), by the Department of Basic Education (“**the DBE**”) in favour of the Lebone Consortium (consisting of Novus, Lebone and UTI SA (Pty) Ltd).



- b. Caxton understands that there was a previous commission agreement between Paarl Media (prior to its change of name) and Lebone which provided for the payment of an incentive commission of 10% or less by Paarl to Lebone.
- c. The commission arrangement is currently governed by an agreement concluded in April 2018 by Mr Keith Vroon (“**Mr Vroon**”), the former CEO of Novus, representing Novus, and Mr Keith Michael (“**Mr Michael**”), the CEO and controlling shareholder of Lebone, on behalf of Lebone. (This agreement was referred to in Caxton’s letter as “**the New Commission Agreement**”. We shall use the same description in this letter.)
- d. Caxton pointed out that the New Commission Agreement, which relates primarily to the DBE Contract, provides for payment of an overriding, additional incentive commission payable by Novus to Lebone.
- e. The New Commission Agreement also provides for the referral of other printing work and a sharing of Lebone’s other printing work, on a case by case basis and by *ad hoc* agreement on the applicable incentive commission.
- f. The basis and justification for the payment of the commission by Novus on the DBE Contract (as distinct from payment for actual printing work which is separately remunerated), is Lebone’s “*access to and business networks*” including in relation to the DBE Contract and printing work required by such contract, which Lebone Litho does not have the operational capacity to undertake itself.
- g. Lebone is not required to provide any services under the New Commission Agreement, other than using its influence, and its performance is not subject to any objective criteria or measurement.
- h. The commission rate in the New Commission Agreement is calculated on the basis of 13% of all revenue derived by Novus from the DBE Contract for 2018, 2019 as well as all extensions. Caxton pointed out that this represents a 3% increase in the commission payable under the earlier agreement entered into between Paarl Media and Lebone Litho.

- i. The increase was granted by Mr Vroon to Lebone Litho in 2018, in respect of the DBE Contract that had been awarded to the Lebone Consortium two years previously.
- j. The additional 3% increase appears to be structured as an early payment incentive, in that it provides that, if Lebone Litho does not procure payment from the DBE of Novus's invoices within two weeks of the receipt from Novus of the delivery notes pertaining to deliveries of printed material to the distribution centre, then the commission will be reduced from 13% to 10%. Caxton also pointed out that the base commission of 10% appears to be unconditional and guaranteed.
- k. Caxton stated that it understood further that subsequent to the conclusion of the New Commission Agreement, the DBE Contract has been extended in favour of the Lebone Consortium for 2020 and 2021 and that the Novus executive, under Mr. Birch and Mr. Todd, have further increased the commission payable to Lebone Litho by 2%, to now stand at 15%.

14. In its letter of 25 March 2020, Caxton summarised the factual position as follows:

“...the New Commission Agreement initially provided for an unconditional base 10% incentive commission and a 3% early payment incentive commission, payable to Lebone on the total value of all Novus printing work under the DBE Contract for 2018 and 2019, and any extensions. The commission is paid as ostensible compensation to Lebone for using its access, and business networks (influence, contacts and connections) (i) to procure printing work (including the DBE Contract); and (ii) to obtain expedited payment from the DBE. The overall commission has since been increased to 15%. In March 2020, the DBE announced an extension to the DBE Contract, in favour of the Lebone Consortium.”

15. Caxton raised concerns that the content of the agreement between Novus and Lebone Litho created at the very least a suspicion of corrupt activities for a number of reasons, including:



- a. A lack of any commercial justification for the overriding commission payments to Lebone Litho in circumstances where it is not clear from the agreement what services were (and continue to be) rendered by Lebone Litho that justify the payment of significant commissions by Novus to Lebone Litho.
 - b. No explanation as to how Lebone Litho could legitimately use its “*access and business networks*” to justify the payment of a commission in relation to the DBE contract.
 - c. If the reason for the payment of a commission to Lebone Litho was for Lebone Litho’s access to and business networks in relation to the DBE contract, then this would suggest some form of influence peddling.
 - d. The incentive commission appears to be an unlawful gratuity paid to Lebone Litho for doing no work or providing no services other than access to and business networks within the DBE.
 - e. The agreements appear to fall foul of a number of provisions of the Prevention and Combatting of Corrupt Activities Act (“**PRECCA**”).
 - f. A number of members of Novus’s senior management appear to have been party to the agreement to increase the incentive commission to 15%, thereby associating themselves with the agreements.
 - g. The Board of Novus appears to continue to abide and accept the making of the commission payments to Lebone Litho, thus aiding and abetting the payments of the commission to Lebone Litho.
 - h. The agreement (as well as the earlier agreements), appear to represent a generally illegal (and undisclosed) contract of which the DBE is most likely unaware.
16. Caxton made it clear in the letter that it is of the view that there is no justification for the perpetuation of the New Commission Agreement and that it appears incumbent upon the Novus

board to file a report in terms of section 34 of PRECCA and to terminate the agreement between Novus and Lebone Litho.

17. Finally, in the letter of 25 March 2020, Caxton provided details of additional information that had come to its attention in relation to large payments made to a former executive (Mr [REDACTED] and a former director of Novus (Mr Vroon) by Mr Michael (Lebone Litho's CEO) and/or Lebone Litho. In this regard, Caxton explained that it understood that:

- a. Mr Vroon was the Novus CEO who signed the New Commission Agreement on behalf of Novus in April 2018. In that agreement, the commission payable to Lebone Litho by Novus was increased from 10% to 13%, which was to the benefit of Lebone Litho and to the prejudice of Novus.
- b. Mr Vroon resigned from Novus two months after signing the agreement.
- c. Mr [REDACTED] ("Mr [REDACTED] who was the business development executive of Novus until his resignation some time in 2019, had frequent interactions with Mr Michael while Mr [REDACTED] was employed by Novus.
- d. Subsequent to Mr Vroon's resignation, but while Mr [REDACTED] was still employed by Novus, a payment in the sum of R14 million was made by Lebone Litho or Mr Michael or one of Lebone Litho or Mr Michael's associates to a company called Brand Me Stitching CC, of which Mr Vroon's wife, Lynette Vroon, is the sole member. Caxton understands further that a portion of the R14 million was subsequently paid, directly or indirectly, to Mr [REDACTED] possibly via a payment made to a company called [REDACTED] Investments (Pty) Ltd, of which Mr [REDACTED] wife, [REDACTED] is the sole director.
- e. Both Mr Vroon and Mr [REDACTED] are now employed by, or are consultants to, Mr Michael or Lebone Litho or associated entities, for financial reward.
- f. Novus sold its business of Paarl Labels to a company associated with Lebone Litho and/or Mr Michael at a purchase price which appears to have been below market value

and to the exclusion of other potential purchasers. Although Caxton is not aware of the extent of his involvement in the transaction, it understands that Mr Vroon participated in the transaction. Caxton is of the view that this may amount to a further form of gratification by Lebone Litho to Mr Vroon.

18. Caxton stated in its letter of 25 March 2020 that it was of the view that there does not appear to be any legitimate basis for the payment of the amounts referred to above and, in the absence of any compelling justification, Caxton is of the view that the payments raise the suspicion that they were made in contravention of the provisions of PRECCA.
19. Lastly, Caxton raised concerns about the reputational risk posed to Novus and its directors by the New Commission Agreement, as well as the associated negative effects on the value of Novus as a listed share.
20. On 27 March 2020, Caxton received a response from Dr Mnganga and Mr Birch. The response was very brief and stated only that they “*noted that the content contained in your letter overlaps significantly with matters raised in your correspondence dated the 30th August 2019, some 7 months ago. The board remains concerned about these serious allegations and shall be discussing this matter at the next scheduled board meeting, and will engage further as may be appropriate thereafter*”. It is noteworthy that the response did not contain any form of denial of any of the matters contained in Caxton’s letter of 25 March 2020.
21. On 31 March 2020, Caxton wrote a letter in response to Novus’s letter of 27 March 2020 in which it stated as follows:
 - a. Caxton was greatly concerned that a period of seven months had passed since Caxton first raised concerns with Novus in relation to the issues set out above and it appears to Caxton that Novus has not taken any action in this regard. Caxton also pointed out that it had gained further insights into the issues, which it raised in its letter of 25 March 2020. Therefore, its letter of 25 March 2020 went further than the previous queries raised in its August 2019 letter. Thus, Caxton advised Novus that had Novus performed a thorough



and comprehensive investigation into the issues raised by Caxton, the relevant facts would, in all likelihood, have become apparent to Novus.

- b. Caxton expressed concern that Novus appears to have no intention of conducting an investigation into the matters raised by Caxton in its letters, possibly on the basis that the outcome of any investigation could prejudice Novus's commercial interests.
- c. Caxton pointed out that Novus's apparent lack of urgency is evident from the suggestion that the issues raised by Caxton will be dealt with at Novus's "*next scheduled board meeting*", instead of scheduling an urgent board meeting given the nature of the matters raised by Caxton and Novus's obligations pursuant to section 34 of PRECCA.
- d. Caxton called for a response from Novus by no later than 3 April 2020.

22. On 5 April 2020, Novus responded to Caxton stating that Caxton's concerns had now been shared with the Novus board. (It is not clear whether this is for the first time.) The letter from Novus did not provide any indication of what steps the board would be taking to investigate the matter or any timelines associated therewith. The response did not contain any denial, whatsoever, of the accuracy of the factual matters raised by Caxton.

Novus board's failure to comply with their fiduciary duties

23. Caxton is of the view that Novus's failure to respond substantively to Caxton's concerns, its ongoing perpetuation of the New Commission Agreement in circumstances where Caxton's serious and unrefuted concerns with that agreement (i.e. that it is *prima facie* an illegal agreement) have not been investigated or addressed, and its failure to take any steps to immediately investigate the very serious questions raised by Caxton in its correspondence are, *inter alia*, indicative of a failure on the part of the Novus board of directors to comply with their fiduciary duties to the company.
24. In summary, as you are aware, the fiduciary relationship between a director and the company on whose board he or she serves has the following features:

- a. The relationship is governed by common law and section 76 of the Companies Act.
- b. In terms of their fiduciary duties, directors are required to ensure that their powers are only exercised for the benefit of the company and never for personal advantage and that directors act honestly in their dealings with their colleagues and with shareholders.
- c. Directors may not exceed their powers, exercise their powers for an improper or collateral purpose, fetter their discretion, or place themselves in a position in which their personal interests conflict, or may possibly conflict, with their duties to the company.
- d. These fiduciary duties are owed by the director to the company and seek to protect the company, its shareholders and the public interest.
- e. Section 76 of the Companies Act deals specifically with directors' fiduciary duties including their duty of care, skill, and diligence. In this regard, directors are obliged to exercise their powers and perform their functions:
 - (a) *In good faith and for a proper purpose;*
 - (b) *In the best interests of the company; and*
 - (c) *With the degree of care skill and diligence that may reasonably be expected of a person –*
 - (i) *Carrying out the same functions in relation to the company as those carried out by that director; and*
 - (ii) *Having the general knowledge, skill and experience of that director.*
- f. In terms of section 76(2)(a), a director is prohibited from using their position of director, or any information obtained while acting in the capacity of a director, to gain an advantage for himself, or for any other person other than the company or a wholly-owned subsidiary of the company, or to knowingly cause harm to the company or a subsidiary of the company.

- g. Furthermore, section 76(2)(b) imposes a statutory duty on a director to inform the board of directors of any information that comes to the director's attention. It provides as follows:

“(2) A director of a company **must** -

.....

- (b) **communicate to the board at the earliest practicable opportunity any information that comes to the director's attention, unless the director -**
- (i) **reasonably believes that the information is -**
 - (aa) *immaterial to the company; or*
 - (bb) *generally available to the public, or known to the other directors; or*
 - (ii) *is bound not to disclose that information by a legal or ethical obligation of confidentiality.”*
- (our emphasis)

- h. All directors are bound by their fiduciary duties and the duty of care, skill and diligence. Section 76(4) of the Companies Act imposes personal liability on directors in circumstances when they fail to act with the required duty of care and skill. Accordingly, a director's fiduciary duties will only be discharged in circumstances where a director takes reasonably diligent steps to become informed about the subject matter in question; did not have a personal interest (or declared such a conflicting interest) in relation to relevant matters; and had a rational basis to believe that decisions were in the best interest of the company at the time.
- i. Directors owe a fiduciary duty to both the company and its shareholders. This principle was applied in *Lewis Group Ltd v Woollam and Others* (1) [2017] 1 All SA 192 where the court held that “*the duty of company directors to act honestly and in accordance with their fiduciary duties to the company is owed not only to the company, but also to the shareholders personally.*”



- j. Accordingly, the directors of Novus owe, *inter alia*, a fiduciary duty to the company and to Caxton *qua* minority shareholder of Novus.

25. Caxton is of the view that the directors of Novus are in breach of their fiduciary duties to Novus for the following reasons:

- a. A number of Novus's directors and/or senior management of Novus appear, in the ongoing absence of any response or exculpatory explanation of the serious issues and facts set out in Caxton's previous correspondence, to have been party to an illegal agreement, the New Commission Agreement (or any similar agreement preceding or post-dating the New Commission Agreement), in terms of which significant commissions were paid by Novus to Lebone Litho.
- b. The board of Novus has been aware of the existence of the New Commission Agreement and continues to abide and accept it, and allowed increased commission payments to Lebone Litho pursuant thereto. Caxton is of the view that this conduct amounts to an infringement of section 76(2)(a) of the Companies Act as it would appear that certain directors may have gained an "*advantage for the director, or for another person other than the company or a wholly owned subsidiary of the company*".
- c. The New Commission Agreement, on the face of it given the facts set out in Caxton's correspondence, represents an agreement for channelling gratuitous and unlawful payments to Lebone in connection with a public tender contract (the DBE contract). In the circumstances, given the failure to terminate the agreement and to file the mandatory section 34 report under PRECCA on the basis of there being sufficient facts to raise at least a suspicion of corrupt activities, thereby impoverishing Novus and exposing it and its directors to potential criminal sanction, the board of Novus is "*knowingly causing harm to the company*" in breach of section 76(2)(a)(ii).
- d. The directors of Novus have failed to adequately respond to and address the questions raised by Caxton, to convene an urgent board meeting and to conduct a comprehensive

investigation. All of this demonstrates a failure to fulfil the directors' fiduciary duty owed to the company and its shareholders. In this regard, section 76(4)(a) of the Companies Act provides that a director is regarded as having satisfied the obligations of acting in the best interests of the company and with the required care, skill and diligence if the director has taken "*reasonably diligent steps to become informed about the matter.*"

- e. The Companies Act requires a director to act with the necessary degree of care, skill and diligence as would be expected of a person carrying out those functions and having the knowledge, skill and experience of that director. In this regard, Caxton does not believe that the current directors of Novus have exercised the necessary degree of care, skill and diligence in assessing, evaluating and investigating the information provided by Caxton in relation to the New Commission Agreement and related matters. In this regard, Caxton is of the view that the Novus board has not taken any precautionary steps to comprehensively investigate or mitigate the issues raised by Caxton and/or to take any remedial steps to deal with the issues raised in this regard (including failing to file a section 34 report). This is especially so in circumstances where, if any steps have in fact been taken in this regard, this has not been communicated to Caxton or the shareholders of Novus. No cautionary announcement, as would be expected of a listed company, has been published, leading to a further concern that the JSE rules have not been complied with.
- f. The lack of urgency by the directors of Novus to adequately respond to and address the questions raised by Caxton, to convene an urgent board meeting and to conduct a comprehensive investigation illustrates a disregard for the directors' fiduciary duties owed to the company and its shareholders.

26. In light of the above, our client is of the view that the directors of Novus have failed to fulfil the required standard of directors' conduct prescribed by section 76 of the Companies Act.



27. Caxton further considers that, in the absence of any compelling reasons to the contrary, it will be incumbent on Caxton to draw the New Commission Agreement to the attention of the appropriate authorities and it reserves its rights in this regard.
28. In the above circumstances, and given the failure to provide any detailed or adequate response to, or denial of, the serious issues raised by Caxton, we urgently invite your full and detailed response to all the issues and facts raised in Caxton's letters as summarised above, including that this is indicative of a failure on the part of the Novus board to comply with their fiduciary duties.
29. Such response should be received by no later than, **Tuesday, 14 April 2020.**
30. Should you fail to fully, adequately and timeously respond, Caxton has instructed us to institute an application in terms of section 162(2) read with section 162(5) of the Companies Act to declare the directors of Novus delinquent on the basis of a breach of their fiduciary duties and breaches of section 76.
31. We look forward to receiving your urgent response.

Yours faithfully

[Unsigned due to electronic transmission.]

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Nortons Incorporated