IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN

Case No: 13721/2022

In the application between:

JACQUES ANDRÉ FISHER N.O.	First Applicant
REUNERT NDIVHUHU KHARIVHE N.O. [In their capacity as joint trustees of the insolvent estate of Cornelius Johannes Steynberg]	Second Applicant
and	
ADRIAAN WILLEM VAN ROOYEN N.O.	First Respondent
HERMAN BESTER N.O.	Second Respondent
CHRISTOPER JAMES ROOS N.O.	Third Respondent
JACOLIEN FRIEDA BARNARD N.O.	Fourth Respondent
DEIDRE BASSON N.O.	Fifth Respondent
CHAVONNES BADENHORST ST CLAIR COOPER N.O. [In their capacity as joint liquidators of Mirror Trading International (Pty) Limited (in liquidation)]	Sixth Respondent
THE MASTER OF THE HIGH COURT, CAPE TOWN	Seventh Respondent

In re:

ADRIAAN WILLEM VAN ROOYEN N.O.	First Applicant
HERMAN BESTER N.O.	Second Applicant
CHRISTOPER JAMES ROOS N.O.	Third Applicant
JACOLIEN FRIEDA BARNARD N.O.	Fourth Applicant
DEIDRE BASSON N.O.	Fifth Applicant

CHAVONNES BADENHORST ST CLAIR COOPER N.O. Sixth Applicant

[In their capacity as joint liquidators of Mirror Trading International (Pty) Limited (in liquidation)]

and

THE MASTER OF THE HIGH COURT, CAPE TOWN Respondent

FILING NOTICE

PRESENTED FOR FILING:

FIRST AND SECOND APPLICANTS' FURTHER ANSWERING AFFIDAVIT

Dated at PRETORIA on this the 30th day of November 2022.

BENTO INCORPORATED
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To: THE REGISTRAR OF THE
HIGH COURT OF SOUTH AFRICA
Western Cape Division
CAPE TOWN

And to: **STRYDOM RABIE & HEIJSTEK INC (SRH INC ATTORNEYS)**
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(SERVED BY E-MAIL BY AGREEMENT)

And to: THE MASTER OF THE HIGH COURT
CAPE TOWN

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[In their capacity as joint Liquidators of Mirror Trading International (Pty) Limited (in liquidation)]

and

THE MASTER OF THE HIGH COURT, CAPE TOWN Respondent

FURTHER ANSWERING AFFIDAVIT OF THE STEYNBERG TRUSTEES

I, the undersigned

JACQUES ANDRÉ FISHER

do hereby make oath and say:

1. I am a major male insolvency practitioner of Van Rooyen FISHER Trustees at Brooklyn Forum Building, Ground Floor, 337 Veale Street, Brooklyn, Pretoria.

2. The facts contained in this affidavit fall within my personal knowledge, save where otherwise stated or where the context indicates otherwise, and are true and correct.

THE DISPUTES OF FACT

3. On 28 October 2022, I deposed to an answering affidavit ("**the October affidavit**"), which also served as support for an application to intervene in the application brought by the first to sixth applicants, being the joint

Liquidators ("**the Liquidators**") of Mirror Trading International (Pty) Limited (in liquidation) ("**MTI**") under the abovementioned case number ("**the Main Application**").

4. As appears from the October affidavit, which is to be read as if specifically incorporated into this affidavit, Reunert Ndivhuhu Kharivhe ("**Reunert**") and I are the joint trustees of the insolvent estate of Cornelius Johannes Steynberg ("**Steynberg**"). The court orders sequestrating the estate of Steynberg are attached to the October affidavit. Reunert and I were appointed as joint provisional trustees and later as joint final trustees of Steynberg's estate, as appears from paragraph 8 of the October affidavit. Reunert and I were appointed as final trustees of Steynberg's estate on 15 November 2021, as appears from a copy of our letter of appointment marked annexure "**JF9**". A confirmatory affidavit of Reunert will be filed of record.

5. On 31 October 2022, being the return date of the rule *nisi* issued on 31 August 2022 in the Main Application and to which I refer in paragraph 10 of the October affidavit, an order was made by agreement *inter alia* by Reunert and I in our aforesaid capacities as joint trustees of Steynberg's estate ("**the Steynberg Trustees**") and the MTI Liquidators, in terms of which the Steynberg Trustees, and other intervening parties were afforded time until 30 November 2022 to deliver further answering affidavits. A copy of the court order is attached marked annexure "**JF10**". This is our further affidavit.

6. In paragraph 12 of the October affidavit, I made reference to the Action which was instituted in the Gauteng Division, Pretoria, against *inter alia* the Steynberg Trustees. On 21 September 2022, the Liquidators delivered a replication to our plea, a copy of which is attached marked annexure "**JF11**".

7. In paragraphs 26 and 27 of the October affidavit, I made reference to the Ponzi application which had been argued in part and which, I have been informed that, argument has been finalised in the early part of November 2022, and that judgment is reserved. That judgment is likely to have an effect on the Main Application and of the approach by the various role players, including the Liquidators and other intervening parties, and the Steynberg Trustees reserves the right to deal with the judgment and its effect in a supplementary affidavit, should the need arise.

8. As I have indicated in paragraph 27 of the October affidavit, the questions raised by the Liquidators are also of importance in the administration of Steynberg's estate, because we have received advice, based on information received by us, that at all material times, Steynberg was the owner of and controlled the bitcoin held at FX Choice, which were in a wallet or wallets in his name, and that creditors in respect of some or all of the bitcoin should be dealt with in the administration of Steynberg's estate. As I also indicated, this includes the 1281 bitcoin (the actual number is 1281.7 but this is inconsequential herein) to which reference is made in paragraph 78 of the founding affidavit in the Main Application. I will revert to this aspect elsewhere in this affidavit.

9. In paragraphs 28 and 29 of the October affidavit, I made reference to the fact that the so-called "*back office*", said to be a database hosted by Maxtra Technologies in India is not reliable; is capable of and was in fact manipulated and that the Liquidators' reliance thereon is misplaced.

10. I also made the point that, when the Liquidators contend in paragraph 89.3 of their founding affidavit in the Main Application that the bitcoin frozen by FX Choice was not the property of Steynberg, but belonged to MTI, this is denied. On the contrary, the 1281 bitcoin and/or its proceeds belonged to Steynberg and the bitcoin or its proceeds should be accounted for, and dealt with, in the administration of Steynberg's estate.

11. The concerns raised by the Steynberg Trustees in respect of the so-called "*back office*" is shared by other litigants in other court proceedings and in the Main Application. By way of example, in the Action, a plea was delivered on behalf of the third, fourth, seventh, eighth, ninth, eleven, fourteenth, fifteenth, sixteenth and nineteenth defendants ("**the Selzer Defendants**"), which is a reference to the attorney representing those defendants on 12 September 2022. It is pleaded by them that:

> "*62.5 It is denied that a calculation based on the difference between the BITCOIN deposited and BITCOIN withdrawn is correct in that such calculation fails to account for:-*
>
> *62.5.1 the trading losses for which an indemnity existed as against the MTI members;*

62.5.2 *the BITCOIN STEYNBERG stills holds or are held by brokers appointed by STEYNBERG and which BITCOINS are not 'unaccounted' for unless STEYNBERG is requested to produce same;*

62.5.3 *the unreliability of the Back Office data which was solely maintained and updated by STEYNBERG;*

62.5.4 *the several "hacks" of the Back Office by third parties during the existence of MTI which compromised the Back Office data, destroyed its accuracy and manipulated the true and factually correct status of the Back Office data;*

62.5.5 *"THE TOKYO REPORT", incorrectly dated July 2020 but compiled July 2021 (hereinafter the "*Tokyo Report*") was compiled by [the Liquidators] own experts who made findings that the database is most likely incomplete in terms of full and comprehensive investment and withdrawal data ..."*

(the underlining is mine)

12. Furthermore, in paragraph 58 of the Selzer Defendants' plea it is stated that at all material times during the existence of MTI, Steynberg had sole and exclusive control over all and any bitcoins transferred to MTI and specifically the control of the single digit wallet identified on the MTI back office where MTI members transferred their bitcoins to.

13. In paragraph 132 of the Selzer Defendants' plea, it is stated that only Steynberg accessed the back office and digital wallets linked to the back office (the single digital wallet where members transferred their bitcoins to) and in paragraph 60 that it is not factually possible for the Liquidators to determine and show:

13.1. the exact number of bitcoins transferred by MTI members to the single wallet identified on the MTI back office; or

13.2. the exact number of bitcoins held in digital wallets controlled by Steynberg; or

13.3. the exact amount of bitcoins transferred to FX Choice or third parties in respect of the MTI member bitcoin; or

13.4. the true extent and exact amount of trading losses suffered in respect of the MTI member bitcoins.

14. In the Main Application, Phillips Rudolf Botha ("**Botha**") also made application to intervene and deposed to an affidavit in support thereof on 26 October 2022. I do not attach a copy thereof, as it will be before the court when the application is heard. Apart from the objections raised by Botha (procedurally and substantively) in respect of the Main Application, he states that:

14.1. he as member of the public mandated MTI to trade with his bitcoin deposited in various wallets he held with MTI from time to time, and withdrew from the wallets he held with MTI;

14.2. he disputes the relief sought by the Liquidators that the bitcoin deposited by him, or any other investors of MTI, is the property of MTI;

14.3. he disputes that MTI had an interest in the bitcoin that could be disposed of in terms of the Insolvency Act (paragraph 30);

14.4. he expressly raised the disputes in his special plea (of which we have not had sight) seemingly prior to the institution of the Main Application;

14.5. he records that this is a dispute that cannot be determined on affidavit as it involves complex factual questions pertaining to Botha's intention and that of MTI when the bitcoin was deposited with MTI (paragraph 32);

14.6. he states categorically that he never had the intention to transfer the rights, title and interests in and to the bitcoin owned by him, to MTI (paragraph 33), and in addition that the Liquidators rely on the wrong agreement (paragraph 37).

15. In short, Botha contends that the bitcoin never formed the property of MTI and that MTI cannot dispose of property not owned by it (paragraph 39). Botha states (in paragraph 41) that it is reasonable to conclude that the outcome of the dispute of ownership in and to his bitcoin would also determine the position of any other persons that engaged with MTI, or at least some of them.

16. Botha had put the Liquidators to the proof in the action instituted against him and that issue remains *lis pendens*, and that he is really prejudiced by

paragraph 2.1 of the provisional order dated 31 August 2022, as it "*completely does away with the Liquidators' obligation to prove that the [bitcoin] to which their claims relate in the action was the property of MTI*".

17. Botha states that he has a claim against MTI if his defences in the action fail, which claim is for the return of, or payment in relation to, the bitcoin that he had initially invested with MTI (paragraph 52).

18. The Steynberg Trustees do not at this stage admit or deny the correctness of the allegations of Botha, but we wish to emphasise that the Liquidators, before instituting the application and obtaining the rule *nisi*, were well aware of the disputes raised in respect of ownership in and to the bitcoin, and in the context of the Steynberg Trustees, the 1281 bitcoin to which I have referred in the October affidavit and which bitcoin were at all material times owned and controlled by Steynberg, in a wallet in his name.

19. In an affidavit deposed to by Clynton Hugh Marks ("**Clynton Marks**") deposed to on 10 June 2021 under case number 19201/2020 in this court (being a preliminary answering affidavit to the intervention application of the Liquidators – then provisional – in the winding-up application in respect of MTI):

19.1. he states to be a 50% shareholder of MTI (paragraph 20) and that only he "*would possess a residuary right to act in the best interests of MTI*", of which Steynberg was the only director "*officially appointed*". Steynberg is the shareholder of the other 50% shareholding in MTI, as appears from my October affidavit;

19.2. he states (in paragraph 24) that the provisional Liquidators wished to recover bitcoin from members who benefitted from payment, which bitcoin vested in the MTI members collectively and not in MTI, and that the back office was hacked numerous times in late 2020 which rendered the record of bitcoin transactions pertaining to each MTI member unreliable and potentially fraught with false entries;

19.3. he states (in paragraph 118) that during the first period of MTI trading via FX Choice, MTI had its own member account which held the 1281 bitcoin (or approximate sum at that time) which very same bitcoin remained with FX Choice and was frozen during or about July 2020. This is inconsistent with the records of FX Choice, as I have mentioned in my October affidavit and as I will demonstrate elsewhere in this affidavit;

19.4. It is evident, however, from paragraph 142 of Clynton Marks' affidavit that Steynberg had bitcoin under his control and in paragraph 303 of the affidavit, he states that the conduct of the Liquidators (then still provisional Liquidators) seeking to and obtaining the 1281 bitcoin from FX Choice and monetising it into South African Rands will be tantamount to illegal self-help to funds which vest in the members of MTI collectively;

19.5. In paragraph 304, Clynton Marks states that the FX Choice bitcoin (the 1281 bitcoin) was not part of the MTI members' bitcoin held in the

bitcoin trading pool account and in paragraph 307 that the conversion prejudiced the members of MTI;

19.6. In paragraph 309, Clynton Marks makes reference to page 33 of the transcription of an interview of the Financial Sector Conduct Authority ("**FSCA**") in August 2020 where Steynberg stated that the 1281 bitcoin were still with FX Choice and that the "*money*" is MTI's money and "*... a portion is mine and a bigger portion is MTI's*". Again, this is inconsistent with the records of FX Choice.

20. Evidently, there is a factual dispute (which was foreseeable when the Liquidators issued the application and took the order) in respect of the ownership, or entitlement to deal with, the 1281 bitcoin in the FX Account.

21. The Liquidators, by obtaining paragraph 2.1 of the rule n*isi* ostensibly obtained the right to deal with the 1281 bitcoin or its proceeds in the winding-up of MTI. I say ostensibly, because the Liquidators do not deal with the disputes raised in respect of the 1281 bitcoin, and the entitlement to deal therewith in the application or in the Order.

22. While we, the Steynberg Trustees, do not take issue with 2.1 of the rule *nisi* insofar as it pertains to bitcoin which the Liquidators prove to belong to MTI – other than the 1281 – the Order should be qualified and make it absolutely clear that the Liquidators must establish ownership in respect of bitcoin which they seek to deal with in the winding-up of MTI.

23. The factual dispute in respect of the 1281 bitcoin cannot be resolved on affidavit. the Liquidators knew that from the start.

SOME HISTORY IN RESPECT OF MTI

24. It is important to set out some history in respect of MTI, Steynberg and the bitcoin held at FX Choice. The facts set out in respect thereof, have been obtained through our investigations in the course of administration of Steynberg's estate. In some respects, our attorney of record, Mario Bento ("**Bento**"), was intimately involved in the obtaining of information and investigating the complex affairs of Steynberg and his interrelation with MTI. A confirmatory affidavit of Bento will be filed of record.

25. I believe that it is common cause that Steynberg was at all relevant times the controlling mind of MTI. So too, I believe that it is common cause (or should be common cause) that Steynberg acted on a frolic of his own and used MTI to obtain access to crypto currency wallets and/or bitcoin of others. However, from our investigations, Steynberg at all material times and until his fleeing to South America in December 2020, had a number of bitcoin in his personal capacity, not obtained through the MTI scheme.

26. Steynberg was involved with MTI since inception. Steynberg held himself out to be a forex trading genius but in truth, he was a genius at conning individuals in entrusting him with their bitcoin.

27. Steynberg's relationship with MTI can, for the sake of convenience, be divided into three phases. These three phases have been identified by the FSCA and have been used by the Liquidators and other litigants in court proceedings, without demur.

28. The first phase commenced with Steynberg registering MTI or purchasing a shelf company and changing its name. Thereafter, during this first phase, he managed to persuade other individuals to join him to put their bitcoin into an account which he had with FX Choice, and wherein he held bitcoin, in order to conduct mirror trading in derivative instruments based on forex pairs. This turned out to be a disaster. Most of the bitcoin were lost and those that remained, were transferred into another account held at FX Choice and the first phase account was closed.

29. In approximately August 2019, the second phase commenced, when Steynberg changed tact. He then held himself out to be a forex trading genius who could make money for anyone who had bitcoin. All that was required for those so-called investors, was to let Steynberg have their bitcoin.

30. To give some credence to the scheme, MTI was implanted to be the other contracting party and thus, the investors were informed that their bitcoin would be transferred to wallets held for them by MTI and from there would be pooled together, to be used by Steynberg for his genius forex trading.

31. Steynberg held out that MTI had a software program which could show the rise and fall of credit balances in the accounts which MTI would maintain for the investors – the co-called "*back office*" – to which I have already referred.

32. Steynberg's scheme worked well and many investors transferred their private bitcoin keys to Steynberg. Thereafter only Steynberg could deal with and transfer bitcoin, using the private bitcoin keys.

33. In truth, MTI had no wallets and the computer entries in the back office of each investor were pure fiction.

34. To facilitate the second phase, Steynberg opened an account with FX Choice. The FX Account was opened by agreement between FX Choice and Steynberg. They were the only parties thereto. At all times from the time of opening the FX Account, Steynberg was the only individual who could transact on the account. After opening the account, Steynberg and other individuals transferred bitcoin to the FX Account. Steynberg was free to do with the bitcoin of the investors as he saw fit. Whether they transferred the bitcoin in terms of written or oral agreements with Steynberg or with MTI, is not known. From the information that we could gather, Steynberg used MTI as his alter ego and he could deal with the bitcoin as he pleased.

35. The investors' bitcoin were pooled into the FX account. It appears to be an undeniable fact that the FX Account was always in the name of Steynberg and under his sole control. This much is evident also from pages 5, 6 and 35 of the FSCA report, annexure "FA8" to the founding affidavit of the Liquidators in the Main Application.

36. How many bitcoin of such investors were kept by Steynberg for himself, or moved to other wallets, or sold to generate money to feed his scheme, is not yet known. This is the nature of bitcoin. Although transactions are traceable, the identity of those involved in the transaction is not known.

37. Steynberg held out that a vast number of people (investors) across almost 200 countries were members of a "*club*" and thus participated in the

scheme, which gave out that the scheme was successful and trustworthy, carrying the imprimatur of vast numbers of people committing vast funds to the scheme.

38. In actual fact the scheme was, for the greatest part, a simple confidence trick to enable Steynberg to get hold of as many bitcoin as possible, for his own benefit.

39. Steynberg sold some of the bitcoin in order to generate revenue with which to pay members who claimed payment of the benefit promised to them, as well as debts due to *bona fide* creditors such as trade creditors, employees and the like. At least initially, MTI did not have a bank account, and these payments were made for the most part through JNX Online (Pty) Limited ("**JNX**").

40. The first sign of the inevitable implosion of the scheme was in July 2020, when the State of Texas in the United States of America got wind of the scheme and obtained interdicts against everyone within its jurisdiction who were involved in it (through FX Choice), including MTI and Steynberg. A so-called Cease-and-Desist order was obtained in Texas and found application to FX Choice, which is a company registered in Belize. At that point in time, the FX Account reflected 1281.7 bitcoin standing to its credit.

41. At about the same time, on 1 July 2020, the FSCA received an anonymous complaint against MTI, as appears from paragraph 2 of page 6 of the FSCA report, annexure "FA8" to the founding affidavit in the Main Application. Steynberg was interviewed by the FSCA on 20 July 2020 and 11 August

2020, as appears from paragraph 33 at page 12 of the FSCA report. In summary, Steynberg, when confronted with the illegality of the scheme, made promises to rehabilitate MTI by, for instance, appointing independent and professional directors, registering for tax and obtaining the required authorisation to conduct business. Although Steynberg had, in some respects, attempted to do so, the reality was that Steynberg could not solve the problems.

42. The third phase then commenced somewhere during the period July and October 2020, when Steynberg hatched a new plan, namely to replace FX Choice as the platform and to state publicly that his and/or MTI's trading activities were transferred from FX Choice to a new entity which he called "*Trade 300*" and where the trades would no longer be in foreign exchange, but in crypto derivatives.

43. Steynberg at that stage told one lie after another on social media, in an attempt to con new investors and to placate existing investors. He told stories of a "*bot*", being an algorithm, which was doing the trading at the speed of light and which, if Steynberg was to be believed, was very successful at trading. However, there was no "*bot*" and in fact, the bitcoin held in the FX Account were never transferred to Trade 300, because there was no Trade 300, and because the Cease-and-Desist order resulted in the 1281 bitcoin being "*frozen*" in the FX Account in the name of Steynberg at FX Choice.

44. Steynberg was the controlling mind of MTI and unconscionably abused the juristic personality of MTI in such a manner and to such an extent that there was no proper distinction between himself and the separate juristic personality of MTI, being a private company. MTI was his alter ego and Steynberg used it for his illegitimate and unconscionable purpose of luring the transfer of bitcoin from the general global public and then using the bitcoin for his own financial gain and to further his fraudulent scheme.

45. I now turn to deal with the 1281.7 bitcoin held in the FX Account (account number 174850) at FX Choice and the correspondence exchanged in respect thereof.

THE CORRESPONDENCE WITH FX CHOICE

46. FX Choice is more fully known as FX Choice Limited and is incorporated (Certificate of Incorporation No. 105,98) in Belize City, Belize as an International Business Company through the Registrar of International Business Companies. FX Choice Limited is an investment company that operates as a global broker. As before, I will refer to it as FX Choice.

47. In correspondence exchanged between Coombe Incorporated Attorneys ("**Coombe**"), myself and Bento with FX Choice, it was explained by FX Choice how their relationship with Steynberg was established; how it operated and how and when MTI became involved, and to what extent. I add that we, the Steynberg Trustees, believe that there has not been a full disclosure made to us in respect of the FX Account and the 1281 bitcoin.

48. In the attached correspondence, FX Choice is at pains to explain exactly how a person or company becomes its client. Regrettably, we have unable to get a clear explanation from FX Choice about the procedures that were followed by Steynberg when he opened his account, and later purported to "*open*" an account for MTI, which according to the records of FX Choice remained Steynberg's account.

49. It is my respectful submission, and the correspondence will show this, that FX Choice merely converted the status of Steynberg's profile with them from what they define as "*personal*" to "*corporate*" and nothing more. This conversion, with respect, is nonsensical and legally untenable since a company, such as MTI, has legal capacity to enter into its own agreements and to conduct its own banking and other accounts – in fact, it is required to do so, and cannot simply use an individual's account for those purposes. It is also not suggested by FX Choice Steynberg that ceded his rights and obligations in terms of the agreement between Steynberg and FX Choice, to MTI or that he "*transferred*"- for a lack of better description – the personal keys in respect of any bitcoin, to MTI. This would in any event not have been possible, since it is prohibited in the Client Agreement itself, as I show in this affidavit.

50. If MTI wished to become a client of FX Choice, it could and should have done so for its own account, with a separate process of requisite compliance and approvals. To the extent that MTI attempted to do so – which is denied, it failed. All that happened was that Steynberg's account profile was changed to *corporate status* in the books of FX Choice, with effect from

16 August 2019. The documentation provided by FX Choice to demonstrate that MTI as a corporate entity opened and operated its own accounts, show the contrary. It was always Steynberg.

51. It will be noted from the documents that FX Choice constantly refers to MTI's successful Application for Opening of a Corporate Account (an online document which is yet to be produced) and attempts to explain this by advising that Steynberg's account profile status was **converted** to "*corporate*" status and that this conversion signifies the birth of MTI's own account. This is disingenuous and, in addition, no explanation is provided as to how the bitcoin in various accounts opened by Steynberg became that of MTI, which I in any event deny.

52. Steynberg remained the client of FX Choice at all relevant times. All the accounts (including the FX Account) remained in his name. This is supported by evidence obtained and reported on by the FSCA, by testimony of individuals at insolvency enquiries conducted by the Liquidators of MTI and recorded in reports of the presiding commissioner (the Honourable Judge (retired) Fabricius) and by FX Choice itself.

53. An aspect that remains unexplained is that after the alleged **conversion** of the profile of Steynberg's FX Account from *personal* to *corporate* status on 16 August 2019, Steynberg remained the (personal) client of FX Choice and transacted on the FX Choice platform in his personal name. This after he should no longer have had personal status, if FX Choice is to be believed. FX Choice states that MTI's last bitcoin withdrawal from their account was

made on 1 August 2019 – that is two weeks before MTI allegedly became FX Choice's client when the *Steynberg status conversion* occurred on 16 August 2019, and which we contend was legally and factually incompetent.

54. FX Choice's own records demonstrate that the FX Account which they belatedly contend belongs to MTI, was in truth Steynberg's account since inception and remained Steynberg's account, until the FX Account was closed after the bitcoin in it were transferred by FX Choice to the Liquidators, wrongly so.

55. I turn to deal with the correspondence exchanged in more detail. I do not repeat the entire contents thereof, to avoid prolixity. The correspondence is to be read as specifically incorporated and extensive reference will be made thereto in argument.

56. On 28 May 2021, Coombe representing the (then provisional) Liquidators wrote a letter to FX Choice which is attached marked annexure "**JF12**", wherein FX Choice was informed, *inter alia*:

56.1. FX Choice was requested to authorise a representative with the necessary background and knowledge of the accounts of MTI and Steynberg, to testify under oath via an online platform, at an enquiry in terms of section 417 and 418 of the Companies Act 61 of 1973.

56.2. The specific issues that the representative would be requested to testify to were set out in paragraph 9 of the letter and includes a brief description of how Steynberg originally started to do business with FX

Choice and a brief description of the history of the business relationship between Steynberg/MTI and FX Choice.

56.3. Also, the representative would be required to testify in respect of issues dealt with in a sworn statement deposed to by Mr Daniel Stephenson on 28 October 2020 ("**the first Stephenson affidavit**") which was seemingly deposed to on behalf of FX Choice in response to questions posed by the FSCA.

56.4. The representative would also be required to deal with the information that FX Choice provided to Coombe previously in a letter described as "the 2nd April 2021 letter".

56.5. On 16 June 2021, FX Choice replied to the aforementioned correspondence, a copy of which is attached marked annexure "**JF13**". Therein FX Choice responded, *inter alia*, as follows:

> "*9.1 Cornelius Johannes Steynberg came to FXChoice and registered a profile on 16th February, 2017. He made his first deposit of 290,000 Bits (0.29 BTC) on 25th June, 2018.* ***Mr Steynberg opened*** *18 (eighteen) Live accounts at FXChoice that had varying degrees of use. We have provided a full list of all accounts in the attachment with their statements. Five of these accounts were opened in 2020. Of these, #174850 was the main account and the other four stood idle (i.e. they were never used). Of the remaining 13 accounts opened prior to 2020, one was the MAM account (Multi-Account Manager account) that Mr Steynberg operated plus three sub*

accounts (these are attached to MAM accounts). The remaining nine accounts had some activity on them at some point and you can see this in the attached statements.

Mr Steynberg's profile had 'personal' status from its initial opening on 16th February 2017 until 16th August 2019 ***when the account was converted*** *to 'corporate' status.* ***He applied*** *for a corporate account on 5th May 2019, but the paperwork wasn't fully submitted and reviewed until 16th August, which is the reason for the discrepancy.*

As well as the 18 Live accounts ***opened by Mr Steynberg****, he also operated three virtual wallets. These operate as non-trading accounts and are designed to hold funds for transfer to trading accounts at opportune moments or for simple replenishment. The wallets he opened were:*

1. *LTP (Litecoin) wallet #25706 created on 25th June, 2018*
2. *Bit (Bitcoin) wallet #25707 created on 25th June, 2018*
3. *USD (United States Dollars) wallet #28793 created on 22nd August, 2018."*

(the underlining and bold is mine)

57. As far as we could establish, this was the first time that mention was made of the change of the account status from "*personal*" to "*corporate*". Curiously, no mention is made of MTI acquiring the "*corporate*" account, or

becoming the account holder or obtaining any right to transact on that account.

58. Also, in paragraph 9.8 of the letter of Coombe dated 28 May 2021, FX Choice was asked when the MAM account terminated or was closed, to which FX Choice replied that:

> "*9.8. The last trading order on the MAM account closed on 5th August, 2019. The last login was on 17th December, 2019. The MAM account closed on 19th January, 2020.*"

59. From the heading of the e-mail, it appears that FX Choice attaches statements for the MAM accounts (on which trading was done by MTI **up to 5 August 2019**) under the description "*MTI Statements .7z*", yet, according to FX Choice, MTI only became their client on 16 August 2019. This is plainly convoluted. It would have been evident to the Liquidators (then still provisional) at that point already (16 June 2021) that the "*conversion*" which FX Choice professed was nothing more than a name change from Steynberg to MTI – something similar to a trading name used by a sole proprietor.

60. In this regard, I also refer to the testimony of Johan Kruger at one of the various rounds of the MTI enquiry, as summarised in the Second Report of Judge H Fabricius (r) dated 22 April 2021 (annexure FA 9.2 to the founding affidavit in the Main Application) in paragraph 65.16 where it is recorded:

> "*The account with FX Choice was in Steynberg's personal name. When we wanted to withdraw the company did not*

allow this and requested financial statements after he had changed the name to a Pty Ltd."

61. In paragraph 9.9 of the letter of 28 May 2021, Coombe enquired from FX Choice:

> "*...In as far as you indicated in the 2 April 2021 letter that MTI had other accounts, i.e. other accounts than account number 174850 with FX Choice, you are requested to please provide us with complete copies of these account statements from inception to closing, alternatively current date.*"

62. FX Choice replied to paragraph 9.9 of the aforementioned letter as follows:

> "*See 9.1 We attached all statements of the 18 accounts connected to Mr Steynberg's profile*"

63. The statements which FX Choice provided of "*all 18 accounts*" are in the name of Steynberg – including the FX account with number 174850 – from where the bitcoin were transferred to the Liquidators. The same statements were subsequently provided to me by FX Choice, as will appear later in this affidavit.

64. In paragraph 9.14 of the letter of 28 May 2021, Coombe enquired from FX Choice:

> "*...is it possible from your records to identify the wallet address/origin of all btc and/or fiat currency from which deposits into any of the accounts in the names of either Mr Steynberg, Mrs Steynberg or MTI were made and to which withdrawals were made?*"

65. FX Choice replied to paragraph 9.14 of the aforementioned letter as follows:

> "*Please see the attachments (userinstructionList) where we detail all transactions conducted by Mr and Mrs Steynberg. Please remember that the transactions are denominated in Bits. there are 1,000,000 Bits in one BTC(Bitcoin)*"

66. The document which FX Choice provided in respect of *all transactions conducted by Mr Steynberg* is attached to annexure "JF13" with the description "*userinstructionList (Cornelius J Steynberg_mti_630220).xlsx*", being an Excel spreadsheet attached hereto marked annexure "**JF14**". It is evident that the account numbers listed in this document include all the accounts later explained by FX Choice as belonging to MTI.

67. On 27 September 2021, I directed correspondence to FX Choice, a copy of which is attached marked annexure "**JF15**". FX Choice replied by e-mail on 5 October 2021, a copy of which is attached marked annexure "**JF16**".

68. In paragraph 1 of my letter of 27 September 2021, I asked of FX Choice:

> "*Who was the trader responsible for trading on the MAM account?*"

69. FX Choice replied:

> "*1. The trader responsible for trading on a MAM account is the MAM account holder. In this instance, that would be Cornelius Johannes Steynberg. However, we cannot say for certain that it was him who executed all the trades.*"

70. I again draw the court's attention to the fact that, according to FX Choice, Steynberg was the MAM account holder – not MTI. In my letter of 27 September 2021, I also asked of FX Choice:

> "*Kindly provide me with copies of all statements in respect of all accounts in the name of Mr CJ Steynberg and Mrs N Steynberg from date of opening until current and/or closing thereof.*

71. FX Choice replied to the request as follows:

> "2. *We have attached all of the account statements for Cornelius Johannes Steynberg. <u>These include the periods he traded with us an individual and under MTI</u>.*" (The underlining is mine)

72. Copies of the statements provided by FX Choice are attached hereto marked annexure "**JF17**". As I have indicated, and as appears from the statements, every statement provided to us by FX Choice is in the name of Cornelius Johannes Steynberg, including the FX Account (account 174850) from where the bitcoin were transferred to the Liquidators.

73. The only sense to be made of what was conveyed by FX Choice is that Steynberg traded in his own name and under the name of MTI. As I will demonstrate, it appears from later correspondence that FX Choice attempts to give some explanation by stating that "*...trading on somebody's name is legal definition...*" and thereafter referring to "*<u>the</u> profile*" as opposed to "*<u>his</u> profile*".

74. In paragraph 3 of my letter of 27 September 2021, I asked of FX Choice:

> *"Are there any other accounts held with FX Choice in respect of which Mr Steynberg is or was mandated to have control over?*

75. FX Choice replied as follows:

> *"3. The account statements we have attached detail all of the accounts Cornelius Johannes Steynberg opened and controlled at FXChoice. We have no way of knowing whether he was given control of other accounts."*

76. The statements, as I have shown, all reflect to be in the name of Steynberg.

77. In paragraph 4 of my letter of 27 September 2021 I asked of FX Choice:

> *"Will it be possible from your records to identify the wallet addresses of all bitcoins and/or any other currency from which deposits and withdrawals into any of the accounts in the name of CJ Steynberg or N Steynberg were made?*

78. FX Choice replied thereto as follows:

> *"4. All deposits and withdrawals were made in BTC (bitcoin). We have attached a file (mti_instr.xlsx) detailing all of Cornelius Johannes Steynberg's deposits and withdrawals."*
>
> (The underlining is mine)

79. The deposits and withdrawals referred to by FX Choice, are recorded in an Excel spreadsheet, a copy of which was attached to their letter of 5 October

2021. This is the same document which FX Choice provided to Coombe Attorneys and which is attached hereto as annexure "JF14".

80. In paragraph 5 of my letter of 27 September 2021, I asked of FX Choice:

> "*Confirmation that the wallet that was transferred/paid to the Liquidators of MTI was in the name of CJ Steynberg or MTI. Please also furnish the necessary documents relating to this specific wallet.*"

81. The reply of FX Choice was as follows:

> "*5. We have attached the statement for account 174850 – this is the main account used by MTI and the transfers to the Liquidators were made from it. We confirm that this account was opened by Cornelius Johannes Steynberg and was transferred to MTI upon requesting corporate status.*" (The underlining is mine)

82. This is simply not true. On their own version, FX Choice professes that MTI became their client on 16 August 2019 consequent upon a status conversion of Steynberg's profile. After many months of enquiring about the involvement of MTI, FX Choice advised on 18 October 2022 – to which I will refer elsewhere - that the account was created on 24 January 2020. It is entirely unexplained how this account could have been transferred to MTI after requesting corporate status from FX Choice in August 2019, if the account did not even exist at that point in time, and was only created on 24 January 2020. Furthermore, it is not explained why it was necessary or competent to transfer the account from Steynberg to MTI, in circumstances

where MTI could and should simply have opened its own account with FX Choice, but which MTI clearly was unable to do.

83. I interpose to state that every email sent by Steynberg to FX Choice (and to which they replied) was from his email address johann@jnxonline.co.za and ended with his name ("Cornelius (Johann) Steynberg"). The emails do not reflect that Steynberg directed it for or on behalf of MTI.

84. Likewise, every email from FX Choice was addressed to "*Dear Cornelius*" and titled "*Regarding your FXChoice account*". This will appear from the strings of emails exchanged between FX Choice and Steynberg, to which I refer elsewhere. I have not seen a single email from an MTI address to FX Choice.

85. On 9 November 2021, Bento directed correspondence to FX Choice, a copy of which is attached marked annexure "**JF18**". FX Choice replied thereto on 17 November 2021 by email, a copy of which is attached marked annexure "**JF19**".

86. In paragraph 10 of the letter of Bento dated 9 November 2021, FX Choice was asked to provide the following documents in respect of Steynberg and (his wife) Mrs N Steynberg:

    a) *Application to open an Account*
    b) *Any supporting documents to such application*
    c) *Approval of Application to open an Account*
    d) *Service Level Agreement*
    e) *Additional or Standard or Apposite Terms and Conditions*
    f) *KYC documents*

87. The response of FX Choice was as follows:

> *"A – Cornelius Steynberg registered with us filling "Account Opening Application Form" on our Website and at the same time accepting Client Agreement meaning that:*
>
> - *He has received, read, and understood all information in the Agreement;*
> - *He has read, understood, and accepted all our policies and procedures; and*
> - *He has received, read, and understood all the information concerning the relevant financial instrument and the related risks.*
>
> *We have attached the Welcome Email to Mr Steynberg.*
>
> *B – We have attached a copy of Mr Steynberg's passport and his proof of address for KYC.*
>
> *C – We have attached the email we sent to Mr Steynberg informing him about the successful verification of his account. The email is dated 22/6/2018.*
>
> *D – Our Client Agreement is attached.*
>
> *E- Again, it would be our Client Agreement that covers this request. It is attached.*
>
> *F – The passport and proof of address mentioned in point B for KYC are attached.*
>
> ..."

88. It is instructive that the Welcome e-mail attached under A (and then already sent to johann@jnxonline.co.za) to the reply of FX Choice is dated 16 February 2017 but his account was only successfully verified sixteen months later on 22 June 2018 after he complied with FX Choice's KYC requirements. KYC is an acronym for Know Your Customer, an international

standard designed to protect financial institutions against fraud, corruption, money laundering and terrorist financing. It involves several steps to establish a customer's identity, understand the nature of customer's activities and qualify that the customer's source of funds is legitimate.

89. Steynberg, if regard be had to the documents provided, seemingly only became a client of FX Choice after he had complied with their KYC requirements.

90. In stark contrast to the above and FX Choice's professed strict rules about verification, KYC documentation and identity checks, it is evident that FX Choice failed to comply with their KYC requirements for the purported opening of an account by MTI (which they claim happened on 16 August 2019). I attach hereto as annexure "**JF20**" an email sent by FX Choice to Steynberg on 18 May 2020 requesting him to complete their KYC form (for the alleged MTI account) in the Backoffice since it was needed to prevent their customers from possible fraud and money laundering activities. I further attach hereto as annexure "**JF21**" a screenshot of the KYC form completed by Steynberg on 18 May 2020. This document was provided to Bento by FX Choice under the title "**KYC MTI.png**" as part of their email dated 17 November 2021, annexure "**JF19**". Nothing in this document relates to MTI, in fact Steynberg completes the "Source of Funds Explanation" section with the following entry: "*Source of funds are derived from two sources.1 My personal investments as an individual and also from my company*".

91. It is furthermore noteworthy that the Client Agreement governing the relationship between FX Choice and Steynberg (an individual) and between FX Choice and MTI (a corporate) is a similar document – although we by no means accept that MTI completed or concluded such agreement with FX Choice. It appears though that the account structure, the account holder information and the legal agreements in respect of personal and corporate clients of FX Choice are exactly the same. I am advised that this is not possible and that, in law, far more information is required from a corporate than from an individual, and that the information and documentation sought would differ.

92. Also, in paragraph 10 of the letter of Bento dated 9 November 2021, Bento required FX Choice to provide the following documents in respect of MTI:

> *g) Similar documents listed in a) to f) above (should same exist)*
> *h) Request by Mr Steynberg to transfer account 174850 from his name to MTI*
> *i) All correspondence exchanges in this regard*
> *j) Approval of the transfer referred to in h) above*
> *k) Terms and Conditions of the transfer*
> *l) Statement/journal/ledger recording the transfer*

93. The response of FX Choice was as follows:

> *"G – We have attached the MTI company documents provided upon application to open a corporate account, including Mr Clinton Hugh Marks' written consent that he agreed with opening the corporate account for MTI.*

H – We have attached the email from Mr Steynberg requesting the conversion to a corporate account.

I – There is a large amount of correspondence between ourselves and Mr Steynberg. We have attached all that we have.

J – We have attached the email we sent to Mr Steynberg, confirming the successful conversion to a corporate account

K – The Client Agreement covers the terms, but here we also attach the MAM agreement, which explicitly governs the MAM trading conducted by Mr Steynberg and MTI.

L – The email mentioned in point J details the successful conversion to a corporate account."

94. The email dated 6 May 2019 which FX Choice refers to be attached as "H" is not one from Steynberg wherein he allegedly requested the conversion to a corporate account (that e-mail is yet to be produced). Rather, annexure "H" is an email from FX Choice to Steynberg informing him that FX Choice is putting the finishing touch to "*your new corporate account*".

95. The email dated 16 August 2019 which FX Choice attached as "J" informed Steynberg that FX Choice has accepted his application for a corporate account. No mention is made of MTI.

96. As for Bento's request under j) for financial documents recording the alleged *transfer* of the account, FX Choice never produced any documents in support of such transfer of the FX Account.

97. I have to point out that FX Choice uses the words *conversion* and *transfer* interchangeably to describe how Steynberg's account/s became MTI's account/s in their books. If a transfer took place from one to the other (I persist with my denial that this was competent) one would have expected a closing balance of Bitcoin on one account and an opening balance with the same value in the new account. This simply never happened because the client remained Steynberg, albeit with new status and another name. I respectfully submit that this could be the only explanation for FX Choice's failure to produce the financial documents or records in support of their assertion. In fact, when asked for MTI account statements, FX Choice, without fail, produced statements in the name of Cornelius Johannes Steynberg.

98. On 4 December 2021, Bento directed further correspondence to FX Choice, a copy of which is attached marked "**JF22**". FX Choice replied thereto on 15 December 2021 by email, a copy of which is attached marked annexure "**JF23**".

99. In paragraph 4 of the email of Bento dated 4 December 2021, FX Choice was asked:

> "*b) Please provide us with a copy of the form, duly completed by Mr Steynberg.*"

100. The form mentioned in paragraph 4 of Bento's email refers to the account opening form with FX Choice, as mentioned above.

101. FX Choice replied thereto by sending a copy of what they referred to as a screenshot of the online form completed by Steynberg when his account was eventually opened on 22 June 2018. The document informs him of the details of his newly opened live trading account containing a login code, password, server description and account type. I attach a copy of the letter hereto as annexure "**JF24**".

102. When this rather detailed document is compared to the screenshot which FX Choice provided as proof of "*MTI's application to open a corporate account*"- which is also an online form – it is clear that there is no resemblance to the proof of opening of an account as provided by FX Choice in respect of Steynberg's account (including the FX account). I attach hereto a copy of the screenshot as annexure "**JF25**".

103. In paragraph 7 of the letter of Bento dated 4 December 2021, the following was asked of FX Choice:

> "*a) What is the account number referred to by Mr Steynberg as "my personal account" in his email to Robert dated Friday, June 19, 2020 11:55 AM? Does this differ from the "MTI live account" referred to by him?*

104. The response of FX Choice was as follows:

> "*7)*
>
> *a) We can only assume that he is referring to account 174850 which is an MTI account opened by Mr Steynberg. We assume he means <u>one and the same thing</u>.*" (the underlining is mine)

105. Again, it is evident that FX Choice did not view MTI as a "*new*" or "*company*" customer. They simply viewed MTI as an extension of Steynberg.

106. On 30 September 2022, Bento directed further correspondence to FX Choice to which FX Choice replied on 18 October 2022. Copies of the correspondence are attached marked annexures "**JF26**" and "**JF27**".

107. To a large extent the content of these letters is a repetition of what is contained in the previous correspondence, to which FX Choice had not replied or fully replied. FX Choice remained at pains to explain how MTI became its client on 16 August 2019 in circumstances where – on the version of FX Choice – there was no more than a "*conversion*" of the account status of a natural person to a corporate, which remains unexplained and incompetent.

108. FX Choice professes in paragraph 4.3 of their letter dated 18 October 2022 that they have strict rules about KYC verification, including the verification of the source of the client's funds. However, they only requested compliance from MTI in May 2020 and seemingly accepted Steynberg's personal reply as compliance. The correspondence provided by FX Choice with Steynberg demonstrate that their Compliance Department only requested financial statements of MTI as late as 23 June 2020.

109. In paragraph 5 of the letter of Bento dated 30 September 2022, FX Choice was informed that:

> "*We have assessed your replies to various questions posed about the relevant accounts and remain of the opinion that*

Mr Steynberg was the only client of FXChoice for purposes of the 18 accounts which he opened since he became your client on 16 February 2017 and that the conversion of the status of his profile from "personal" to "corporate" bears no legal significance or effect. We are strengthened in our views by your fast and loose reference to Steynberg/MTI in correspondence as well as your accounting records bearing the same account numbers for Cornelius Johannes Steynberg and Mirror Trading International (Pty) Ltd."

110. FX Choice replied thereto as follows:

"5. *Your opinion is not correct, after 16th August 2019 our client is MTI, as the profile is corporate after that date.*

This can be proved by the explicit application for a corporate profile by Mr Steynberg, by the provided resolutions of MTI, by the provided corporate documents of MTI, by the attempts to be provided audited financial reports by the MTI and all the communications with Mr Steynberg.

Also, as we mentioned in p. 4.2. from above, some of the accounts were opened after the profile was converted to corporate, so it can be no doubt about the type of these accounts.

Last but not least, the FSCA considers the accounts as corporate without any doubt."

111. After the Texas State Securities Board issued an emergency Cease and Desist Order on 7 July 2020 against MTI, Steynberg and some other parties, the FX Account was blocked and Steynberg was informed thereof. FX Choice clearly realized that its dealings with Steynberg and MTI were problematic and it wished, at all cost, to sever their ties with Steynberg and MTI.

112. FX Choice transferred the bitcoin in the FX Account to the Liquidators in circumstances where – on the version of FX Choice itself – the account was held by Steynberg and not MTI and in circumstances where the Liquidators were not entitled to the bitcoin.

113. FX Choice did so, now proclaiming that the FSCA also held the view that the accounts at FX Choice were held by MTI. This is plainly incorrect.

114. The FSCA's report is attached to the founding affidavit as "FA8". I refer the Honourable Court to page 6 thereof where the FSCA stated:

> "*Clients' assets were pooled into one FX Choice account alleged to be in the name of MTI. However, the account at FX Choice was in fact in the name of Steynberg.*"
>
> And
>
> "*Thereafter all the clients' assets were pooled into one FX Choice account alleged to be in the name of MTI. However, this account was in fact in the name of Steynberg at FX Choice.*"

115. The Liquidators were not entitled to, and should not have insisted on the transfer of the bitcoin and FX Choice should not have transferred the bitcoin to the Liquidators. They simply should have held onto the bitcoin until ordered otherwise by a competent court, or until the Texas State Securities Board instructed them to release the bitcoin.

116. So too, the FSCA should also not have endorsed the transfer of the Bitcoin held in the FX Account (account number 174580) from FX Choice to the

Liquidators. Unfortunately, at that point in time Steynberg was missing and his estate had not yet been sequestrated. However, this does not mean that the bitcoin could be validly transferred to the Liquidators, or that the Liquidators could be entitled to deal with the bitcoin or its proceeds in the winding-up of MTI.

117. The administrative director of FX Choice, Mr Daniel Stephenson, deposed to the first Stephenson affidavit, to which I have already referred.

118. The second Stephenson affidavit ('**the second Stephenson affidavit**") is attached to Bento's letter of 30 September 2022 in which Bento asked FX Choice, in paragraph 7, to:

> "*... Please explain how account number 174850 was "the only account ever utilised by MTI for live trading purposes", where MTI only became your client on 16 August 2019 but according to your Mr Stephenson "the last time MTI withdrew funds from the account was on 1 August 2019". I attach a copy of Mr Stephenson's affidavit and direct your attention to paragraph 5 in particular.*"

119. The response of FX Choice was as follows:

> "*7. Your question here shows a misunderstanding of our company's processes and activity or maybe we weren't able to explain you how it works. There is difference between a profile and an account.*
>
> *Each client can operate multiple trading accounts within one profile with us. We allow only one profile. The profile is the one that could be with individual or corporate status. Once the profile registered, the verified client with*

that profile can create multiple trading accounts, as the accounts are following the status of the profile. Once the profile is changed to 'corporate' status, the account/s do not change it numbers or other individualization, they just become accounts from a corporate profile.

Please also see attached an approval from the other shareholder of MTI a corporate account to be opened.

In addition to this, please note the above-mentioned, some of the trading accounts were opened after the profile was converted to a corporate one, this is why it could be no uncertainty about the type of these accounts or the funds in such accounts."

(the underlining is mine)

120. I again refer the Honourable Court to the Second Report of Judge (r) Fabricius attached as annexure "FA 9.2" to the founding affidavit and draw the Court's attention to paragraph 65.17 thereof where he refers to the *affidavit of FX Choice* and expresses the hope that the author (i.e. Daniel Stephenson) will still give evidence in a virtual hearing about how things worked in general. To the best of our knowledge, Daniel Stephenson never gave evidence.

121. On 10 August 2021, Hendri Punt of Mostert & Bosman Attorneys, representing the Liquidators, directed correspondence to Matthys Potgieter and Rinier (Raubenheimer), a copy of which is attached marked annexure "**JF28**". Significantly, the subject is FxChoice and the attachments are referred to as "*Steynberg Account.xlsx*". Therein, Hendri Punt attached his summary of the various accounts (at FX Choice) and if regard be had to the

schedule thereto, no mention is made of MTI. The "*Steynberg Account*" attached to the email therefore relates to Steynberg and Mrs Steynberg, and includes the FX Account (with number 174850).

122. On 27 October 2021, Selzer Law directed correspondence to FX Choice, a copy of which is attached marked annexure "**JF29**". Significantly, Selzer enquires about the "*evidence*" submitted by FX Choice through signed affidavits (and I draw the attention of the court to the plural) by Daniel Stephenson, the one dated 28 October 2020 and the other undated but received on 8 October 2021 (the signed version of the second affidavit was found amongst other documents pertaining to MTI and Steynberg, a copy of which is attached to "JF26"). From the letter of Selzer Law, it is evident that they believed that the Stephenson affidavits appeared to be fictitious and many other aspects were raised in respect of the FX Choice account, including that Daniel Stephenson states in paragraph 4 of the first affidavit that "*on the close of MTI'S last trade froze the account on 10 June 2020*" and that "*Subsequently, you also provided FX Choice statements to the Interim Liquidators which disclosed that Account #174850 was held in the name of CORNELIUS JOHANN STEYNBERG (viz. in his personal name and not that of MTI). However, Stephenson in his affidavits assumed and unequivocally referred to the account as belonging to MTI. This requires an explanation from you.*"

123. It is not known whether a response was received to the letter of Selzer Law. What is clear, is that the problems with the explanations of FX Choice, and the fact that the claim of the Liquidators that the bitcoin and/or its monetised

value should be treated as an asset in the winding-up of MTI, is incorrect. The Liquidators knew this prior to requesting FX Choice to transfer the bitcoin to them, they would have known it from the FSCA report.

124. Put plainly, the Liquidators had no proof that the bitcoin in the FX Account vested in MTI but they had the contrary version of Steynberg given at the interview with the FSCA, as well as the FSCA report stating that the accounts at FX Choice were in the name of Steynberg. They seemingly insisted on the transfer of the bitcoin without investigating the correctness of their assertion that it constitutes an asset in the winding-up of MTI. In the process, more than a billion rand was received by the Liquidators, in the winding-up of MTI, after monetarising the bitcoin received from FX Choice.

125. I further attach marked annexure "**JF30**"an affidavit of Sean Newman. In paragraph 44 of the affidavit, mention is made of the FX Account and he stated that the statement attached as annexure "N" to the affidavit, is in the name of MTI. Sean Newman obtained that statement as an attachment to an email from FX Choice to the FSCA. However, as I have demonstrated, this is entirely inconsistent with the correspondence received from FX Choice, in response to the questions that Bento and I directed to them. FX Choice attached the statements, all of which reflected Steynberg as the account holder.

THE LIQUIDATORS' KNOWLEDGE

126. After our appointment as the Steynberg Trustees, I contacted the Liquidators and raised with the Liquidators the issue of whether the bitcoin

transferred from FX Choice – and now its monetised value – should be treated as an asset in the winding-up of MTI or in the administration of Steynberg's estate.

127. I proposed to the Liquidators that we jointly seek an independent opinion from Senior Counsel on the matter. This would have resulted in certainty as to where the bitcoin – or its monetised value – should be treated as an asset, and at the same time, where the creditors in respect of the bitcoin should be proving claims.

128. Initially, the Liquidators showed a willingness to co-operate, as it makes eminent sense, but on 18 February 2022 they communicated to Bento that they were no longer amenable to the proposal. Since the communication was on a without prejudice basis, I do not attach the correspondence in this regard.

129. However, this caused us to instruct Adv PF Louw SC to consider the facts and to express his opinion on where the bitcoin and the claims of creditors should lie – in MTI, or in the administration of Steynberg's estate. I have already attached the opinion to my October affidavit as annexure "JF8".

130. The Liquidators have not provided any reason why the bitcoin – or its monetised proceeds – should be dealt with in MTI, as opposed to the Steynberg estate. They also appeared to have closed their eyes to the facts, as set out in this affidavit and apparently failed to independently investigate in depth, the contractual relationships between Steynberg and FX Choice and MTI and FX Choice.

131. Mr Thor Pedersen ("**Pedersen**") is a forensic investigator who was instructed to track bitcoin from data obtained from electronic devices which belonged to Steynberg. Pedersen was appointed by the Liquidators. During February 2022 I was informed by Pedersen that he had reported to the Liquidators that at least 155 of the Bitcoin in the FX Account belonged to Steynberg in person. I have since requested him for a copy of the report but he was not willing to share it with me unless authorised by the Liquidators.

132. On 9 March 2022 Bento and I met with three of the Liquidators and their attorney of record at my office to discuss the expungement of a claim which MTI's Liquidators proved against the Steynberg estate. During the meeting I raised the report which Pedersen had told me about and requested the Liquidators to provide me with a copy thereof. I was informed that the Liquidators wished to first consider the report before sharing it with me and that they would revert.

133. Bento followed up with the Liquidators' attorney on 28 March 2022 about the report and was informed on 30 March 2022 that she would be meeting with the Liquidators on Monday (4 April 2022) to obtain confirmation by all the Liquidators that the report may be shared with me.

134. On 7 April 2022 Bento and I again met with the Liquidators and their attorney via a virtual Teams Meeting. I was informed by Mr Herman Bester that they Liquidators needed more time to decide whether they are willing to share the report with me and would be meeting with each other about the next morning at 10 a.m. and would revert.

135. Upon further enquiries about obtaining a copy of the report, it was refused. This, despite the fact that Pedersen reported to the Liquidators that at least 155 Bitcoin recovered (and monetised) by the Liquidators undeniably belong to Steynberg. If Pedersen is to be believed, the 155 bitcoin or its monetised value is an asset in Steynberg's estate.

136. In paragraph 2.1 of the rule *nisi*, the Liquidators obtained an interim order that the bitcoin should be treated in the estate of MTI as intangible assets that constitute "*property*" as defined in section 2 of the Insolvency Act 24 of 1936. We agree that bitcoin, in general terms, should be dealt with as assets (and probably as intangible assets) in an insolvent estate.

137. However, the relief which the Liquidators obtained in paragraph 2.1, does not identify any particular bitcoin as belonging to MTI. The Liquidators, through paragraph 2.1, attempted to circumvent the factual dispute in respect of the ownership and entitlement to deal with the 1281 bitcoin received from the FX Account.

138. For the reasons set out in this affidavit, there are factual and legal disputes in respect of the bitcoin held in the FX Account. At this point in time, claims are made in respect thereof by the Liquidators; the Steynberg Trustees and by the investors, such as Botha. There is a factual dispute in this regard which should be determined on our version. However, considering the circumstances, the nature of the dispute and the complexity of the factual and legal issues, it is unlikely that a court will be able to determine these aspects in motion proceedings.

139. To the extent that the Liquidators persist with paragraph 2.1 in its present form, we oppose confirmation of the rule *nisi*. Paragraph 2.1 should make it clear that the Liquidators may only deal with bitcoin or its monetised value of which the ownership or entitlement to deal with it, is proved by the Liquidators.

140. Paragraph 2.1 should also make it clear that the 1281 bitcoin or its monetised value (which includes the 155 bitcoin or its value) are not to be dealt with as an asset in the winding-up of MTI until such time as the ownership or entitlement thereto, has been established by a court.

THE FOUNDING AFFIDAVIT

141. I turn to deal with the founding affidavit of the Liquidators. To the extent that I do not deal with any allegation contained therein, it is not to be construed to be admitted.

142. **AD PARAGRAPHS 1 TO 16**

142.1. The Liquidators have not made a disclosure of the disputes that exist in respect of their entitlement to the bitcoin emanating from the FX Account, of which the account holder was at all times Steynberg, who was the only individual entitled to transact thereon.

142.2. The Liquidators do not identify what evidence constitutes hearsay and for which they seek leave in terms of section 3 of the Law of Evidence Amendment Act.

142.3. Save as aforesaid, I do not take issue with the allegations contained in these paragraphs, save to say that, as indicated elsewhere, the Steynberg Trustees are of the view, and have been advised, that the bitcoin emanating from the FX Account should be dealt with as an asset in the Steynberg estate.

143. **AD PARAGRAPHS 17 TO 28**

143.1. I do not admit that MTI is a company unable to pay its debts. The Liquidators have not put up any admissible evidence which show that MTI is a company unable to pay its debts, within the meaning of section 339 and 340 of the Companies Act 61 of 1973.

143.2. Save as aforesaid, I do not take issue with the allegations in these proceedings, subject to the denials contained in our plea in the Action which was instituted by the Liquidators.

144. **AD PARAGRAPHS 29 TO 39**

144.1. This Court is yet to pronounce on the issue of whether MTI conducted a fraudulent and unlawful Ponzi-type investment scheme, which issue was argued in the Ponzi application.

144.2. It is common cause, or not seriously disputed, that Steynberg was the main protagonist in the scheme although others may have been, at different times, the primary marketers of the scheme.

144.3. It appears that the Liquidators did not properly investigate the contractual relationships and conduct of the FX Account with FX Choice.

144.4. I take note of, and do not take issue with, the Liquidators seeking the directions and guidance of the court in respect of claims of creditors, and how they are to be dealt with in the winding-up of MTI. Likewise, I do not take issue with the Liquidators seeking guidance and direction in respect of the classification of bitcoin; its nature and how it is to be dealt with in the winding-up of a company or the administration of an insolvent estate.

144.5. The Steynberg Trustees, however, take issue with the Liquidators' relief obtained in paragraph 2.1 and their attempt to obtain a court sanction to deal with the 1281 bitcoin or its monetised value in the winding up of MTI, in complete disregard to what I have set out in this affidavit and despite their knowledge that the FX Account was in the name of, and operated only by Steynberg. In this respect, we claim that it that it resorts in the administration of the Steynberg estate.

144.6. In the past, the Steynberg Trustees have suggested to the Liquidators that the winding-up of MTI and the administration of the Steynberg estate be conducted as one, either formally (potentially through section 20 of the Companies Act 71 of 2008) or otherwise, but the Liquidators have refused this. The benefit, had they agreed, would be that the dispute in respect of which estate the bitcoin – or its monetised

value – should be dealt with and the investors/creditors relating to that bitcoin should be dealt with, would be avoided.

144.7. In this regard, in some of the litigation instituted by the Liquidators against investors, this point has already been raised.

144.8. Therefore, subject to the aforesaid, and the reservation in respect of the confirmation of paragraph 2.1 of the rule *nisi* in its present form, I do not take issue with the questions posed to the court as set out in paragraphs 37.1 to 37.4 and I agree that the determination thereof in these proceedings is as important to the Steynberg Trustees, as it is to the MTI Liquidators.

144.9. Plainly, if the court finds that the bitcoin – or its monetised value – should not be dealt with in the winding-up of MTI, it will be argued that it has to be dealt with in the administration of Steynberg's estate.

144.10. I do not, for the purposes of this application alone (and pertinently not for the purposes of any other litigation or the Action) take issue with the remainder of the allegations in these paragraphs.

145. **AD PARAGRAPH 40**

Save for what I say elsewhere in this affidavit, I take note of the purpose and structure of the affidavit, subject to what I have set out in this affidavit and without conceding that the Liquidators are entitled to the relief sought.

146. **AD PARAGRAPHS 41 TO 98**

146.1. I deny the allegations, for which no evidence is put up by the Liquidators and in particular I deny that insofar as they are inconsistent with my October affidavit, this affidavit and our plea in the Action.

146.2. The Steynberg Trustees do not dispute that Steynberg and others conducted a scheme whereby bitcoin was swindled from investors. In general terms, they did so in the manner set out in these paragraphs which should be read with the FSCA report (which deals with the three relevant periods) and with my October affidavit, this affidavit and our plea in the Action.

146.3. I also admit that the bitcoin in a wallet is owned and controlled by the person in whose name that wallet is registered. As indicated, the FX Account was in the name of Steynberg. So too, the wallets in respect thereof were in the name of Steynberg.

146.4. I deny the allegations in paragraph 89.3 that the bitcoin frozen by FX Choice (or rather at FX Choice) was not the property of Steynberg and that it belonged to MTI, or anyone else. As indicated before, our view and advice are that the bitcoin form part of the assets of Steynberg and that the bitcoin – or its monetised value – should be dealt with in the administration of Steynberg's estate.

146.5. It will, however, be extremely difficult for this court, if not impossible, to determine this issue (pertaining to the bitcoin, who owned it, how it should be classified and in which estate it should be dealt with) in

motion proceedings. The Liquidators, having issued this application, should have foreseen that a factual dispute would arise in respect thereof, and in fact existed prior to their launching the application.

147. **AD PARAGRAPHS 99 TO 114**

147.1. I deny the allegations and in particular that MTI is a company unable to pay its debts; that its liabilities exceed it assets or that any admissible evidence is placed before the court on which such a finding can be made.

147.2. Significantly, MTI never prepared annual financial statements, management accounts or the like from which it can be determined what its assets consisted of (or were valued) or what its liabilities amounted to.

147.3. Furthermore, these allegations are subject to, and will be influenced by, the judgment in the Ponzi application.

147.4. In respect of paragraph 111, the Liquidators were not entitled to the 1281 bitcoin which they monetarised to the sum of R1,058,176,013.69. The bitcoin – or its value – should be administered in the insolvent estate of Steynberg.

147.5. In respect of the missing bitcoin, we have no firm view of the estate in which it resorts in, or should be dealt with, but this will be further investigated upon tracking down the bitcoin. However, the missing

bitcoin cannot be factored into the calculation when determining whether MTI is a company unable to pay its debts.

147.6. If what we believe is correct, and the bitcoin and creditors should be dealt with in the administration of Steynberg's estate, then both should be excluded from the calculation in MTI's winding-up.

147.7. This aspect too, raises a factual dispute which cannot be resolved in motion proceedings and which will be determined, largely, by the determination of the court in respect of the nature and classification of bitcoin and in which estate it should be dealt with.

148. **AD PARAGRAPHS 115 TO 117**

148.1. To the extent that the allegations are inconsistent with my October affidavit and this affidavit, and my plea in the Action, it is denied.

148.2. Save as aforesaid, I do not take issue – for the purpose of this application only – with the allegations contained in these paragraphs, which constitute legal argument. I reserve the right to raise disputes in respect of these arguments at the hearing of the application and in other court proceedings.

149. **AD PARAGRAPHS 118 TO 128**

149.1. The contents of these paragraphs consist of legal argument. To the extent that it does not, the allegations are denied.

151.2. The adjudication of this application, to the extent that it is not referred to oral evidence or to trial, which appears to be unavoidable. will be of assistance to the Steynberg Trustees.

151.3. Accordingly, it is submitted that the rule should, in respect of paragraph 2.1, be discharged or be amended to cater for the dispute in respect of the ownership and entitlement to all the bitcoin or its monetised value which the Liquidators wish to deal with in MTI. In particular, the 1281 bitcoin or its monetised value should be excluded, pending resolution of the dispute and pronunciation by the court in respect of ownership and entitlement thereto.

151.4. In those circumstances, it is submitted that as between the Liquidators and the Steynberg Trustees, each should pay their own costs on the basis that the costs should be costs in the winding-up of MTI (for the Liquidators) and the administration of Steynberg's estate (in respect of the Steynberg Trustees). Should the Liquidators not agree to amend paragraph 2.1, the Steynberg Trustees will seek costs against MTI.

DEPONENT

I certify that this affidavit was signed and sworn to before me at PRETORIA on this the 30th day of NOVEMBER 2022, by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding

on his conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'

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