

**PART ONE**  
**ANNEXURE "A"**  
**CRIMES**

**[A] 2000 Audited Results of Regal Holdings**

**Fraud**

1 Levenstein and Lurie are guilty of the crime of fraud<sup>1</sup>.

1.1 On or about 16 May 2000 and in Johannesburg and / or Sandton Levenstein and Lurie did unlawfully and with the intent to defraud expressly or impliedly and falsely represent<sup>2</sup> to EY and / or the Reserve Bank and / or Regal Bank's depositors and / or Regal Holdings' shareholders :

1.1.1 that the "Audited results for the year ended 29 February 2000" ("the 2000 preliminary results") had been audited at the time of publication thereof whereas in fact such results had not been audited at the time of such publication;

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<sup>1</sup> Fraud consists in unlawfully making, with intent to defraud, a misrepresentation which causes actual prejudice or which is potentially prejudicial to another : See **Hunt, South African Criminal Law and Procedure** Volume 2; **Common-Law Crimes, 2nd ed., p 755.**

<sup>2</sup> See § 43-45; 48-64 Part Two and § 22. 35, 45, 47 and 67 Part Three. See also inter alia EY DT(1)178; KPMG170; R146; DT(1)177; E161, E55.1; E76; EY010047, EY010126; EY010227, EY010237, EY010244.3; EY010270; EY010277; EY010281; EY010292; EY010296; EY020133; EY020273; EY030427; EY130043; EY130065; EY130075; EY130077 KPMG168.

- 1.1.2 that the Regal Holdings board approved the year-end results reflecting earnings per share of 79,96 cents whereas in fact no board approval had been given;
  - 1.1.3 that all expenditure incurred by Regal Bank to generate the branding income had been written off in the 2000 year whereas in fact R6m branding expenditure had been deferred;
  - 1.1.4 that approximately R18m branding expenditure had been written off during the 2000 year whereas in fact such expenses had not been identified and written off during such year;
  - 1.1.5 that generally accepted accounting practice allowed for setting off the abovementioned R18m branding expenditure against income deferral whereas in fact generally accepted accounting practice would not allow this as no such expenditure had been identified or incurred;
  - 1.1.6 that a dividend was based on earnings of 79,96 cents per share "approved by the board" whereas in fact the Regal Holdings board had never approved such earnings.
- 1.2 At the same time and place Levenstein and Lurie, with the intent to defraud, failed to disclose :
- 1.2.1 to the Reserve Bank, Regal Bank's depositors and Regal Holdings' shareholders that Regal Bank had sought recognition of R55m of branding income and that only R5,5m

of branding income had been recognised by EY, incorporated in the results, and agreed to by Lurie and Levenstein;

1.2.2 to the Reserve Bank, Regal Bank's depositors and Regal Holdings' shareholders that an amount of R6 million of branding income had been deferred;

1.2.3 to Regal Bank's depositors and Regal Holdings' shareholders that EY had threatened to qualify the financial statements if Holdings insisted on including the amount of R55 million for branding income;

1.2.4 to Regal Bank's depositors and Regal Holdings' shareholders (after obtaining the written consent of the Registrar of banks in terms of section 7(5) of the Bank's Act) that KPMG was appointed by the Reserve Bank to review the different valuations provided by EY and Holdings;

1.2.5 to Regal Bank's depositors and Regal Holdings' shareholders that KPMG supported EY in principle and had opined that no income should be recognised for the branded entities.

1.3 The misrepresentations were actually or potentially prejudicial to EY and/or the Reserve Bank and/or Regal Bank's depositors and / or Regal Holdings' shareholders in one or more of the following respects:

1.3.1 the misrepresentations would or could have induced EY to express an invalid or defective audit opinion in respect of the 2001 financial year;

- 1.3.2 EY's audit opinion by EY would or could have influenced Regal Holdings shareholders or potential investors in Regal Holdings shares to buy, sell or hold such shares;
- 1.3.3 EY's audit opinion would or could affect the Reserve Bank supervisory function of Regal Bank, with potential prejudice to its depositors and Regal Holdings' shareholders.

### Contravention of s 249(1) of the Companies Act

2

- 2.1 Levenstein and Lurie are guilty of a contravention of s 249(1)<sup>3</sup> of the Companies Act.
- 2.2 Levenstein and Lurie made statements in the 2000 preliminary results which were false in a material particular knowing them to be false in the respects set out in paragraph 1 hereof.

### Contravention of s 250(1) of the Companies Act

3

- 3.1 Levenstein and Davis are guilty of a contravention of s 250(1)<sup>4</sup> of the Companies Act.

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<sup>3</sup> s 249 **False statements and evidence**

(1) Any person who in any statement, return, report, certificate, financial statement or other document required by or for the purposes of any provision of this Act makes a statement which is false in any material particular, knowing it to be false, shall be guilty of an offence.

3.2 Levenstein and Davis, directors or officers of Regal Bank and Regal Holdings, made a false entry in a book, document, financial record or financial statement of Regal Bank or Regal Holdings:

3.2.1 by recording, in Regal Bank's accounting records, a false entry reflecting deferred expenditure of R6m;

3.2.2 by falsely reflecting in Regal Holdings' 2000 preliminary results an amount of R6m as deferred expenditure.

#### Contravention of s 251(1) of the Companies Act

4

4.1 Levenstein, Lurie and Davis are guilty of a contravention of s 251(1)<sup>5</sup> of the Companies Act.

4.2 Levenstein, Lurie and Davis, directors or officers of Regal Bank and Regal Holdings, and made, circulated or published or concurred in the

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<sup>4</sup> s 250 **Falsification of books and records**

- (1) Any director or officer of a company or any other person who conceals, destroys, mutilates, falsifies or makes any false entry in or, with intent to defraud or deceive, makes any erasure in any book (including any minute book), register, document, financial record or financial statement of any company shall, subject to the provisions of subsection (2), be guilty of an offence.
- (2) It shall be a defence to any charge under subsection (1) of concealing, mutilating, falsifying or making a false entry or erasure in any book, register, document, financial record or financial statement to prove that the accused had no intention either to defraud or to conceal any offence or any conduct which he believed might constitute an offence or render any person liable to any penalty or civil obligation.

<sup>5</sup> s 251 **False statement by directors and others**

- (1) Every director or officer of a company or accountant employed by or auditor of a company or any other person employed generally or engaged for any special work or service by the company who makes, circulates or publishes or concurs in making, circulating or publishing any certificate, written statement, report or financial statement in relation to any property or affairs of the company which is false in any material particular, shall, subject to the provisions of subsection (2), be guilty of an offence.
- (2) In any prosecution under subsection (1) it shall be a defence to prove that the person charged had, after reasonable investigation, reasonable grounds to believe and did believe that the certificate, written statement, report or financial statement was true, and that there was no omission to state any material fact necessary to make the statement as drafted not misleading.

making, circulating or publishing of a financial statement in relation to the property or affairs of Regal Bank and Regal Holdings which was false in the material particulars set out in paragraph 1 hereof.

**[B]        2000 Statutory Annual Financial Statements of Regal Holdings**

Contravention of s 288 of the Companies Act

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- 5.1    Levenstein, Lurie, Buch and Davis are guilty of a contravention of s 288(2) read with s 288(3) of the Companies Act<sup>6</sup>.
- 5.2    During or about the period 16 May 2000 to 25 October 2000 Levenstein, Lurie, Buch and Davis, directors or officers of Regal Holdings, failed to take all reasonable steps to secure that the Regal

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<sup>6</sup> s 288 **Obligation to lay group statements before annual general meeting**

- (1) Where at the end of its financial year a company, which is not a wholly owned subsidiary of another company incorporated in the Republic (including an external company which is a subsidiary of a company incorporated in the Republic), has subsidiaries, group annual financial statements shall be made out and shall be laid before the annual general meeting of the company before which its own annual financial statements are so laid under section 286(1).
- (2) Subject to the provisions of section 291 such group annual financial statements shall together with the company's own annual financial statements in conformity with generally accepted accounting practice fairly present the state of affairs and business of the company and all its subsidiaries at the end of the financial year concerned and the profit or loss of the company and all its subsidiaries for that financial year, as a whole so far as concerns the members of the company and shall for that purpose include at least the matters prescribed by Schedule 4, in so far as they are applicable and comply with any other requirements of this Act.
- (3) (a) Any director or officer of a company who fails to take all reasonable steps to comply or to secure compliance with the provisions of this section or with any other requirements of this Act as to matters to be stated in group annual financial statements, shall be guilty of an offence.  
 (b) In any proceedings against any director or officer of a company under paragraph (a), the defence referred to in section 284 (4) (b) shall be available to him.

Holdings group annual financial statements complied with the provisions of s 288 (2) of the Companies Act.

5.3 The Regal Holdings group's 2000 annual financial statements did not comply with the provisions of s 288(2) of the Companies Act in one or more of the following respects<sup>7</sup>:

5.3.1 they falsely represented that Regal Holdings' corporate governance was strong, whilst in fact it was weak in number of respects;

5.3.2 they stated that the Regal group had formed the Regal Treasury Incentive Share Scheme, which was not operational at year-end. The statement was false in that by year-end amount of R15,1 million had been advanced by Regal Bank to the Regal Treasury Incentive Share trust;

5.3.3 they failed to disclose a written undertaking by Regal Holdings to issue to Levenstein 5 million Regal Holdings shares, which at the date of purported approval, gave rise to a potential commitment of approximately R36,5 million;

5.3.4 they falsely disclosed fully diluted earnings per share as 50,01 cents per share in that the 5 million Regal Holdings shares to be issued to Levenstein were not taken into account in computing such fully diluted earnings per share;

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See § 67-68 Part Two and § 22,35,45, 47-49 Part Three; DT(1) 30; 58; 178; EY010277; EY020133; EY030283; EY030307; EY120133; EY130043; EY130060-130061; EY130064-65; EY130068; EY160069; EY130077; EY130077.2; EY130218 - 130237; I2:533; 581; I3:42; KD69; 71; R146; Strydom 3441

- 5.3.5 they falsely stated that the Regal Holdings board of directors had approved the financial statements, whereas the Regal Holdings board had never approved them;
- 5.3.6 they falsely stated that the financial statements had been signed by Lurie and Davis on behalf of the Regal Holdings board on 16 May 2000 when they were not available in their final and published form on 16 May 2000 and could therefore not have been signed on that date;
- 5.3.7 they failed to disclose that, included under the account caption of "Prepayments" of R7 million, was R6 million branding expenditure that had been deferred;
- 5.3.8 the R2 million bonus to Levenstein, described in the books of account as intellectual capital, was falsely included in the financial statements under the account caption "Fixed assets", instead of disclosing it separately as an intangible asset;
- 5.3.9 they falsely refer to "the group's conservative approach to risk management" when the group's approach to risk management was anything but conservative, as evidenced by the significant loans made to entities and non-entities to purchase Regal Holdings shares (Shareholders' Trust : R19,7 million; Incentive Trust R15,1 million; Levenstein Data 1 : R : R6,1 million; JL Associates & Trust R15,2 million; Forfin: R4,8 million and loans to start up entities with no



proven track record: Medsurg : R5,9 million; LAK Trading Company : R13,5 million);

5.3.10 they falsely indicated that there was no significant concentration of credit risk whilst in fact there was a significant concentration of risk in the following respects :

5.3.10.1 included in "Moneymarket assets and funds" of R632.8 million were preference shares in Mettle SPV's totalling approximately R162m. Those preference shares were also reflected as "Negotiable securities" whereas in fact they were preference shares, which were not readily negotiable;

5.3.10.2 included in the account caption "Advances" of R254,2 million were the following loans : Shareholders Trust : R19,7 million ; Incentive trust : R15,1 million ; Greek Community Foundation : R15,8 million.

5.3.11 they falsely reflected the total directors' remuneration as R2,1 million, thereby excluding the R2 million bonus paid by Regal bank to Levenstein;

5.3.12 they falsely failed to indicate that the Tradequick and RVM preference shares were encumbered in that their proceeds were to be used to discharge the associated deposits;

- 5.3.13 they falsely included under the account caption "Advances" an amount of R6,1 million in respect of Levenstein Data 1 whilst in fact such an advance to Levenstein Data 1 did not exist and failed to disclose that the R6,1 million (plus accumulated interest) had been used to acquire Regal Holdings shares;
- 5.3.14 they falsely included under the account caption "Advances" an amount of R15,2 million in respect of JL Associates & Trust whilst in fact such advance to J L Associates & Trust did not exist and failed to disclose that the R15,2 million (plus accumulated interest) had been used to acquire Regal Holdings shares;
- 5.3.15 they falsely reflected an amount of R164 145 946 as deposits from other banks whilst in fact these deposits were deposits made by Mettle SPV's in respect of Tradequick and RMV;
- 5.3.16 they recognised branding income of R5.5 million when such income could not be measured with sufficient reliability for it to be included in income;
- 5.3.17 they falsely failed to disclose related party transactions in respect of Levenstein Data 1, J L Associates and Trust, Forfin and the Shareholders Trust;
- 5.3.18 they failed to disclose amounts advanced to directors and managers of R2 929 099.

Contravention of s 286(4) of the Companies Act

6

- 6.1 Levenstein, Lurie, Buch and Davis are guilty of a contravention of s286(4) read with s 286(3) of the Companies Act<sup>8</sup>.
- 6.2 During or about the period 30 May 2000 to 25 October 2000 Levenstein, Lurie, Buch and Davis, directors or officers of Regal Bank, failed to take all reasonable steps to ensure that the Regal Bank annual financial statements complied with the provisions of s286(3) of the Companies Act.
- 6.3 Regal Bank's 2000 annual financial statements did not comply with the provisions of s 286(3) of the Companies Act in one or more or all of the respects set out above.

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S286 Duty to make out annual financial statements and to lay them before annual general meeting

(3) The annual financial statements of a company shall, in conformity with generally accepted accounting Practice, fairly present the state of affairs of the company and its business as at the end of the financial year concerned and the profit or loss of the company for that financial year and shall for that purpose be in accordance with and include at least the matters prescribed by Schedule 4, insofar as they are applicable, and comply with any other requirements of this Act.

(4)(a) Any director or officer of a company who fails to take all reasonable steps to comply or to secure compliance with the provisions of this section or with any other requirements of this Act as to matters to be stated in annual financial statements, shall be guilty of an offence.

(b) In any proceedings against any director or officer of a company under §(a), the defence referred to in s284(4)(b) shall be available to him.

**[C] Levenstein's 2000 Director's Remuneration Notification**Fraud

7

- 7.1 Levenstein is guilty of the crime of fraud.
- 7.2 During or about the first half of 2000 in Johannesburg or Sandton Levenstein did unlawfully and with the intent to defraud expressly or impliedly and falsely represent<sup>9</sup> to EY and/or the Reserve Bank and/or Regal Bank's depositors and/or Regal Holdings' shareholders that his total director's remuneration for the 2000 financial year was R413 000.
- 7.3 At the time when Levenstein made the representation it was false in that, in respect of the 2000 financial year, he earned the following additional remuneration:
  - 7.3.1 a bonus of R2 million paid to him by Regal Bank on or about 15 February 2000;
  - 7.3.2 the right to 5 million Regal Holdings with a value of approximately R36,5 million;
  - 7.3.3 amounts paid to Levenstein by Regal Bank through a Standard Bank account outside Regal Bank's accounting records during the period 1 March 1999 to 29 February 2000 totalling R228 500.

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<sup>9</sup> See § 43 -45 Part Two and § 46 Part Three; DT(1) : 28; DT(1):39; EY:020273.

- 7.4 The misrepresentations were actually or potentially prejudicial to EY and/or the Reserve Bank and/ or Regal Bank's depositors and/or Regal Holdings' shareholders.

Contravention of s 249(1) of the Companies Act

8

- 8.1 Levenstein is guilty of a contravention of s 249(1) of the Companies Act.
- 8.2 Levenstein, in a statement, return, report, certificate, financial statement or other document required by or for the purposes of any provision of the Companies Act, made a statement which was false in a material particular, knowing it to be false, by recording, in his 2000 directors remuneration notification, that his total directors' remuneration for the 2000 financial year was R413 000 whereas, during the 2000 year he received the additional remuneration set out in paragraph 7.

Contravention of s 251(1) of the Companies Act

9

- 9.1 Levenstein, is guilty of a contravention of s251(1) of the Companies Act.
- 9.2 Levenstein, was a director of Regal Bank and Regal Holdings and made, circulated or published or concurred in the making, circulating or publishing of a written statement, report or financial statement in

relation to the property or affairs of Regal Bank and Regal Holdings which was false in a material particular in that, in his directors' remuneration for the 2000 financial year, he recorded his total remuneration for the 2000 year was R413 000 whereas, during such year he received the additional remuneration set out in paragraph 7.

[D] **Non-Approval of 2000 Financial Statements**

Fraud

10

10.1 Levenstein is guilty of the crime of fraud.

10.2 On or about 14 May 2000 and in Sandton or Pretoria Levenstein did unlawfully and with the intent to defraud expressly or impliedly and falsely represent<sup>10</sup> to the Reserve Bank in a letter of that date that "the year end financials" had been approved unanimously by "the Board" and "the Audit Committee".

10.3 At the time when Levenstein made the representation it was false in that the "Audited results for the year ended 29 February 2000" had not been approved by either Regal Bank or the Regal Holdings boards of directors or by the audit committee.

10.4 The misrepresentations were actually or potentially prejudicial to the Reserve Bank in that the misrepresentation would or could affect the Reserve Bank supervisory function of Regal Bank, with potential prejudice to its depositors and Regal Holdings' shareholders.

Contravention of s 298 of the Companies Act

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<sup>10</sup> See § 45, 49, 67 Part Two; E78.; EY130065; EY130043; EY130218; Buch 2765; 2717 - 2723; Davis 2840; Levenstein 1340 - 1354; 1364 -1368; Lopes : 2030 -2034; Lurie : 2460 - 2461.

11

11.1 The directors of Regal Bank and Regal Holdings as at September 2000 are guilty of a contravention of s298<sup>11</sup> of the Companies Act.

11.2 During or about September 2000 the 2000 annual financial statements of Regal Bank and the 2000 annual financial statements of Regal Holdings had were issued, circulated or published :

11.2.1 without approval by the directors of respectively Regal Bank and Regal Holdings;

11.2.2 without a proper signing thereof as envisaged in s 298(1) of the Companies Act.

**[E] 2000 Regal Holdings Half - Yearly Interim Report**

12

12.1 Levenstein and Davis are guilty of the crime of fraud.

12.2 On or about 21 September 2000 and in Johannesburg or Sandton Levenstein and Davis did unlawfully and with the intent to defraud expressly or impliedly and falsely represent<sup>12</sup> to EY and / or the

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<sup>11</sup> s 298 **Approval and signing of financial statements**

- (1) The annual financial statements of a company other than the auditor's report, shall be approved by its directors and signed on their behalf by two of the directors or, if there is only one director, by that director, and group annual financial statements shall similarly be approved and signed by the directors of the holding company.
- (2) If a copy of any annual financial statements, or group annual financial statements which have not been approved and signed as required by subsection (1), is issued, circulated or published, every director or officer of the company concerned who is a party to such issue, circulation or publication thereof, shall be guilty of an offence.



Reserve Bank and / or Regal Bank's depositors and / or Regal Holdings' shareholders that the unaudited income before tax for the six months ended 31 August 2000 was R40.2 million whereas the profits should have been reduced by at least the following items:

- 12.2.1 branding income of R5.5 million recognised in the 2000 financial year;
- 12.2.2 branding income of R20.5 million recognised in the 2001 financial year;
- 12.2.3 income reflected as received from Elul in respect of a branding fee R2.7 million;
- 12.2.4 a payment to Levenstein of R650 000 which was falsely included in creditors;
- 12.2.5 expenditure of Regal Bank in the amount of approximately R1,3m which was falsely reflected in the books of the Shareholders Trust and adjusted at the year end;
- 12.2.6 expenditure of Regal Bank of approximately R20 million that had been falsely credited to other expenditure/income and debited to branding work in progress during the relevant six month period and transferred to the BOE Bank account at year end. (The amount applicable to the six months cannot be determined by the commissioner.);

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<sup>12</sup> See §69-74 Part Two and §22, 50 and 60 Part Three; See also inter alia DT(1)28, DT(1)30-32, DT(1)38, EY010408; EY010413; EY110366; EY130119; EY180248; K(2)243.2.

- 12.3 At the same time and place Levenstein, and Davis, with the intent to defraud, made further misrepresentations in that they (under circumstances where they had a duty to do so) failed:
- 12.3.1 to disclose to the Reserve Bank, Regal Bank's depositors and Regal Holdings' shareholders that Regal Bank had made advances to the Shareholders' Trust totalling R36m against security of R17.6 million;
  - 12.3.2 to disclose to the Reserve Bank, Regal Bank's depositors and Regal Holdings' shareholders that Regal Bank had made advances to the Share Incentive Trust totalling R51.4m against security of R33.3 million;
  - 12.3.3 to disclose to Regal Bank's depositors and Regal Holdings' shareholders that the Reserve Bank had commissioned a s7 report and that significant issues had arisen as a result thereof;
  - 12.3.4 to disclose to EY, the Reserve Bank, Regal Bank's depositors and Regal Holdings' shareholders that Regal Bank had undertaken to issue 5 million shares to Levenstein for no consideration.
- 12.4 The said misrepresentations were actually or potentially prejudicial to EY and/or the Reserve Bank and/ or Regal Bank's depositors and/ or Regal Holdings' shareholders.

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- 13.1 Levenstein and Davis are guilty of a contravention of s 249(1) of the Companies Act.
- 13.2 Levenstein and Davis, in a statement, return, report, certificate, financial statement or other document required by or for the purposes of any provision of the Companies Act, made a statement which was false in a material particular, knowing it to be false, by recording, in Regal Bank's accounting records, a false entry reflecting the items set out in paragraph 12.

Contravention of s 250(1) of the Companies Act

14

- 14.1 Levenstein and Davis are guilty of a contravention of s 250(1) of the Companies Act.
- 14.2 Levenstein and Davis, directors or officers of Regal Bank and Regal Holdings, made false entries in a book, document, financial record or financial statement of Regal Bank or Regal Holdings by recording, in Regal Bank's accounting records, the entries set out in paragraph 12.

Contravention of s 251(1) of the Companies Act

15

- 15.1 Levenstein and Davis are guilty of a contravention of s 251(1) of the Companies Act.
- 15.2 Levenstein and Davis, directors or officers of Regal Bank and Regal Holdings, made, circulated or published or concurred in the making, circulating or publishing of a financial statement in relation to the property or affairs of Regal Bank and Regal Holdings which was false in the material particulars set out in paragraphs 12.

Contravention of s 305(1) of the Companies Act

16

- 16.1 Levenstein and Davis are guilty of a contravention of s 305(1)<sup>13</sup> read with s 308 of the Companies Act.
- 16.2 On or about 25 September 2000 Levenstein, and Davis, directors or officers of Regal Holdings, failed to take all reasonable steps to secure that the Regal Holdings group annual financial statements complied with the provisions of s 305 of the Companies Act.

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**s 305 Form and contents of interim report and provisional annual financial statements**  
(1) For the purposes of sections 303 and 304 interim reports and provisional annual financial statements shall respectively be in accordance with and include at least the matters prescribed by Schedule 4 in so far as they are applicable and shall comply with the other requirements of this Act.

16.3 Regal Holdings' 2000 interim reports did not comply with the provisions of s 305 of the Companies Act in one or more of the respects set out in paragraph 12.

**[F] 93 Grayston**

Fraud

17

17.1 Levenstein is guilty of the crime of fraud.

17.2 On 17 November 2000 Regal Treasury Property Investments (Pty) Ltd ("RTPI"), a subsidiary of Regal Holdings, in terms of a forward sale agreement that would become effective in 2012, sold immovable property, 93 Grayston, to Mettle Properties International (Pty) Ltd ("MPI"), a Mettle Ltd subsidiary or SPV, for a purchase price of R600 million.

17.3 During or about the period 17 November 2000 to 26 June 2001 and in Johannesburg and / or Sandton Levenstein did unlawfully and with the intent to defraud expressly or impliedly and falsely represent<sup>14</sup> to EY, the Reserve Bank, Regal Bank's depositors, Regal Holdings' shareholders, the boards of Regal Bank and Regal Holdings, Cohen

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<sup>14</sup> See §91 Part Two and §18, 19 and 28 of Part Three; See also inter alia DT2:546.9; EY110199; EY110365; EY110399; EY160327; EY160328; EY110208 - 110210; EY130135; EY150027; EY150033; EY150034; F21.1; I3:30-32; K3:42; Cohen:1846 - 1847; 1853 - 1860; Kruse 528; Levenstein 2954 - 2968; Oosthuizen 3002 - 3005; Strydom 862; 960 - 980;1107.

and Oosthuizen that the sale of 93 Grayston was irrevocable, unconditional, final and an out-and-out sale.

17.4 At the time when Levenstein made the representation it was false in that :

17.4.1 the sale of 93 Grayston was not an irrevocable, unconditional, final and out and out sale;

17.4.2 in terms of the undermentioned put option, MPI had the right to sell the property back to RTPI at any time on or after 2 January 2017 at a base price of R1,2 billion adjusted per a designated formula.

17.4.3 At the same time and place Levenstein, with the intent to defraud, made further misrepresentations in that he (under circumstances where he had a duty to do so) failed to disclose to EY, the Reserve Bank, Regal Bank's depositors, Regal Holdings' shareholders, the boards of Regal Bank and Regal Holdings, Cohen and Oosthuizen:

17.4.3.1 that the sale of 93 Grayston was part of the 93 Grayston Mettle structured finance deal consisting, not only of a sale agreement, but also of a preference share agreement, a put option and a call option;

17.4.3.2 that in terms of the preference share agreement Regal Bank undertook to provide funding to MPI to

enable it to pay the purchase price in terms of the agreement of sale.

17.5 The said misrepresentations were actually or potentially prejudicial to EY, the Reserve Bank, Regal Bank's depositors, Regal Holdings' shareholders, the boards of Regal Bank and Regal Holdings, Cohen and Oosthuizen.

#### Contravention of s 251(1) of the Companies Act

18

18.1 Levenstein is guilty of a contravention of s 251(1) of the Companies Act.

18.2 Levenstein, a director of Regal Bank and Regal Holdings, made, circulated or published or concurred in the making, circulating or publishing of a financial statement in relation to the property or affairs of Regal Bank and Regal Holdings which was false in a material particular in that the "Audited results for the year ended 28 February 2001" falsely reflected income and an investment of R36,5 million in respect of the sale of 93 Grayston whereas in substance no such sale had taken place.

**[G] Metshelf 1**Fraud

19

19.1 Levenstein is guilty of the crime of fraud.

19.2 During or about the period 29 November 2000 to 26 June 2001 and in Johannesburg and / or Sandton Levenstein did unlawfully and with the intent to defraud make the following express or implied representations<sup>15</sup> to EY, the Reserve Bank, Regal Bank's depositors and Regal Holdings' shareholders:

19.2.1 that the Shareholders Trust had sold eight million Regal Holdings shares to "Mettle", alternatively Mettle Ltd, further alternatively Mettle Securities Limited at a price of R5,50 per share;

19.2.2 that the sale of the eight million shares was made as part of the normal operations of the Shareholders Trust, i.e. to move the shares from weak to strong hands and that the sale was not part of the Mettle structured finance deals;

19.2.3 that the sale was an unconditional, arms length transaction and out and out sale to an institutional buyer and served as an indication of the market value of the shares.

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<sup>15</sup> See §91 Part Two and §18, 19, 24 and 52 Part Three; See also inter alia E:282; E:287; E:291; DT1:30;



19.3 At the time the representations were made, the representations were false in one or more or all of the following respects:

19.3.1 the eight million shares had not been sold as part of the normal operations of the Shareholders Trust, i.e. to move the shares from weak to strong hands;

19.3.2 the sale of the shares was part of the Metshelf 1 Mettle structured finance deal;

19.3.3 the sale of the shares was not a true indication of the market value of the shares at the time of the sale;

19.3.4 the sale of the shares was not an unconditional, arms length transaction and was not an out and out sale in that, in terms of the Metshelf 1 structured finance deal, Regal Bank bore all of the risk of a diminution in the value of the eight million shares in the event of a fall in the Regal Holdings share price.

19.4 The misrepresentations were actually or potentially prejudicial to EY, the Reserve Bank, Regal Bank's depositors and Regal Holdings' shareholders.

#### Contravention of s 38 of the Companies Act

- 20.1 Regal Bank and its directors at the time of the undermentioned financial assistance are guilty of a contravention of s 38(1)<sup>16</sup> read with s 38(3) of the Companies Act.
- 20.2 On or about 27 October 2000 and at Johannesburg Regal Bank, by means of a loan, guarantee, the provision of security or otherwise, directly or indirectly, gave financial assistance Hollowprops (Pty) Ltd (a Mettle SPV, which later changed its name to Metshelf 106 (Pty) Ltd ("Metshelf 106")) in the amount of R44 million for the purpose of or in connection with a purchase by Metshelf 106 shares of its holding company, Regal Holdings.
- 20.3 The financial assistance made by Regal Bank to Metshelf 106 did not constitute the lending of money in the ordinary course of the business of Regal Bank as envisaged in s 38(2)(a)<sup>17</sup> of the Companies Act in that:
- 20.3.1 Metshelf 106 was a Mettle SPV;
- 20.3.2 Regal Bank bore the full risk of loss in respect of any diminution in the market price of the Regal Holdings shares purchased by Metshelf 106;

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<sup>16</sup>

**s 38 No financial assistance to purchase shares of company or holding company**

- (1) No company shall give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares of the company, or where the company is a subsidiary company, of its holding company.
- (2) The provisions of subsection (1) shall not be construed as prohibiting-

<sup>17</sup>

- (a) the lending of money in the ordinary course of its business by a company whose main business is the lending of money;
- (3) (a) Any company which contravenes the provisions of this section, and every director or officer of such company, shall be guilty of an offence.
- (b) For the purpose of this subsection 'director', in relation to a company, includes any person who at the time of the alleged contravention was a director of the company.
- (c) It shall be a defence in any proceedings under this section against any director or officer of a company if it is proved that the accused was not a party to the contravention

- 20.3.3 The interest on the financial assistance had been capitalised and by the time of curatorship on 26 June 2001 no part of the financial assistance had yet been recovered by Regal Bank.

#### Contravention of s 249(1) of the Companies Act

21

- 21.1 Levenstein is guilty of a contravention of s 249(1) of the Companies Act.
- 21.2 Levenstein, in a statement, return, report, certificate, financial statement or other document required by or for the purposes of any provision of the Companies Act, made a statement which was false in a material particular, knowing it to be false, by recording, in Regal Bank's accounting records, a false entry reflecting income of R5,2 million in respect of a preference share investment arising from the Metshelf 1 structured finance deal whereas in fact no such income should have been recognised.

#### Contravention of s 250(1) of the Companies Act

22

- 22.1 Levenstein is guilty of a contravention of s 250(1) of the Companies Act.
- 22.2 Levenstein, a director of Regal Bank and Regal Holdings, made a false entry in a book, document, financial record or financial statement of Regal Bank or Regal Holdings by recording, in Regal Bank's accounting

records, a false entry reflecting income of R5,2 million in respect of a preference share investment arising from the Metshelf 1 structured finance deal whereas in fact no such income should have been recognised.

Contravention of s 251(1) of the Companies Act

23

23.1 Levenstein is guilty of a contravention of s 251(1) of the Companies Act.

23.2 Levenstein, a director of Regal Bank and Regal Holdings, made, circulated or published or concurred in the making, circulating or publishing of a financial statement in relation to the property or affairs of Regal Bank and Regal Holdings which was false in a material particular in that the "Audited results for the year ended 28 February 2001" falsely reflected income of R5,2 million in respect of a preference share investment arising from the Metshelf 1 structured finance deal whereas in fact no such income should not have been recognised.

**[H] Kgoro**Fraud

24

- 24.1 Levenstein is guilty of the crime of fraud.
- 24.2 During or about the period 26 April 2001 to 13 June 2001 and in Johannesburg and / or Sandton Levenstein did unlawfully and with the intent to defraud expressly or impliedly and falsely represent<sup>18</sup> to EY, the Reserve Bank, Regal Bank's depositors and Regal Holdings' shareholders that Regal Bank or Regal Holdings owned 25% shares in Kgoro, that such shareholding was of a short nature and that it would be disposed of within 6 - 9 months after year end.
- 24.3 At the time Levenstein made the representations they were false in that Regal Bank had sold its 25% Kgoro shares to a Mettle subsidiary of SPV on or about 11 October 2000.
- 24.4 The said misrepresentations were actually or potentially prejudicial to EY, the Reserve Bank, Regal Bank's depositors and Regal Holdings' shareholders.

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<sup>18</sup> See §91 Part Two and §18, 19 and 23 Part Three; See also inter alia DT(2)554; EY110361; EY110391; EY110394; EY130116; EY130136; EY140268; EY140276; I3:10; Aitken 947; Strydom 933.

Contravention of s 249(1) of the Companies Act

25

25.1 Levenstein is guilty of a contravention of s 249(1) of the Companies Act.

25.2 Levenstein, in a statement, return, report, certificate, financial statement or other document required by or for the purposes of any provision of the Companies Act, made a statement which was false in a material particular, knowing it to be false:

25.2.1 by recording, in Regal Bank's accounting records, a false entry reflecting an amount of R150 million as being due by BOE Bank in respect of the Kgoro transaction;

25.2.2 by recording, in Regal Bank's accounting records, a false entry reflecting income of R5,9 million in respect of a preference share investment arising from the Kgoro deal whereas in fact no such income should have been recognised.

Contravention of s 250(1) of the Companies Act

26

26.1 Levenstein and Davis are guilty of a contravention of s 250(1) of the Companies Act.

26.2 Levenstein and Davis, directors or officers of Regal Bank and Regal Holdings, made a false entry in a book, document, financial record or financial statement of Regal Bank or Regal Holdings :

26.2.1 by recording, in Regal Bank's accounting records, a false entry reflecting an amount of R150 million as being due by BOE Bank in respect of the sale;

26.2.2 by recording, in Regal Bank's accounting records, a false entry reflecting income of R5,9 million in respect of a preference share investment arising from the Kgoro deal whereas in fact no such income should have been recognised.

#### Contravention of s 251(1) of the Companies Act

27

27.1 Levenstein is guilty of a contravention of s 251(1) of the Companies Act.

27.2 Levenstein, a director of Regal Bank and Regal Holdings, made, circulated or published or concurred in the making, circulating or publishing of a financial statement in relation to the property or affairs of Regal Bank and Regal Holdings which was false in a material particular in that the "Audited results for the year ended 28 February 2001" falsely reflected income of R5,9 million in respect of a preference share investment arising from the Kgoro deal whereas in fact no such income should have been recognised and falsely reflected R150 million (less

certain irregular transfers) as a deposit whereas in fact no such deposit exists.

**[I] Sempres**

Fraud

28

28.1 Levenstein is guilty of the crime of fraud.

28.2 During or about the period 7 March 2001 to 24 June 2001 and in Johannesburg and / or Sandton Levenstein did unlawfully and with the intent to defraud expressly or impliedly and falsely represent<sup>19</sup> to the boards of Regal Bank and Regal Holdings, Cohen and Van der Walt:

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<sup>19</sup> See §19 and 30 Part Three; See also inter alia DT(2)552; K(3) 5.30; 6; 12; 13; 18; vdW 128, 141, 153, 164, 172, 176, 273; 280; TdeC48-49; Cohen 1837-1844; Oosthuizen 3002-3007; vdW 2573 - 2576.



- 28.2.1 that the Sempres transaction was a "cash neutral transaction, that no money was going to move";
- 28.2.2 that the R18m Sempres shares purchased by Regal Bank for R18m as part of the Sempres transaction had never been marked to market and would only be marked to market once the sustainability of the Sempres share price was evident;
- 28.2.3 that "no capital outlay was required" in respect of the Sempres transaction;

29

- 29.1 At the time when Levenstein made the representations they were false in that:
  - 29.1.1 the Sempres transaction was not a "cash neutral transaction" due to the fact that, as part of the Sempres transaction, Regal Bank intended to make and in substance made a loan of R5m to KEB Holdings and Unitrade;
  - 29.1.2 Levenstein's statement that the R18m Sempres shares purchased by Regal Bank had never been marked to market and would only be marked to market once the sustainability of the Sempres share price was evident was untrue in that, during April 2001, Levenstein instructed de Castro to recognise in the income of Regal Bank R1 million in respect of the Sempres shares; and in that during March 2001, de Castro was instructed by an unknown person (probably

Levenstein) to recognise in the income of Regal Bank R5 million in respect of the Sempres shares;

29.2 Levenstein's statement that "no capital outlay was required" in respect of the Sempres transaction was untrue in that R5m had been advanced to KEB Holdings and Unitrade in terms of the Sempres transaction;

29.3 The misrepresentations were :

29.3.1 actually or potentially prejudicial to Regal Bank, Regal Holdings, Cohen and Van der Walt in that, due to the misrepresentations, any decision or action by the boards, Cohen or Van der Walt in regard to the Sempres transaction was or would have been based on incorrect facts;

29.3.2 actually prejudicial to Regal Bank's depositors and Regal Holdings' shareholders and depositors in that the curator of Regal Bank concluded that the R5m loan was irrecoverable and that the intellectual capital stated at R14,1m had no value; or potentially prejudicial to Regal Bank's depositors and Regal Holdings' shareholders in that the recoverability of the loan depended on the value of the Sempres shares.

**[J] Metshelf 2**

Contravention of s 38 of the Companies Act

- 30.1 Regal Bank and all its directors at the time of the undermentioned financial assistance to are guilty of a contravention of s 38(1) read with s 38(3) of the Companies Act.
- 30.2 On or about 14 March 2000 and at Johannesburg or Sandton Regal Bank, by means of a loan, guarantee, the provision of security or otherwise, directly or indirectly, gave financial assistance Metshelf 106 (Pty) Ltd ("Metshelf 106") in the amount of R10m for the purpose of or in connection with a purchase by Metshelf 106 of the shares of its holding company, Regal Holdings<sup>20</sup>.
- 30.3 The financial assistance made by Regal Bank to Metshelf 106 did not constitute the lending of money in the ordinary course of the business of Regal Bank as envisaged in section 38(2)(a) of the Companies Act in that:
- 30.3.1 Metshelf 106 was a Mettle SPV;
  - 30.3.2 Regal Bank bore the full risk of loss in respect of any diminution in the market price of the Regal Holdings shares purchased by Metshelf 106;
  - 30.3.3 The interest on the financial assistance had been capitalised and by the time of curatorship on 26 June 2001 no part of the financial assistance had yet been recovered by Regal Bank.

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<sup>20</sup> See §18, 25, 53 Part Three; See also inter alia DT(2)554; I(3)25; Strydom 852.

**[K] Metshelf 3**Contravention of s 38 of the Companies Act

31

- 31.1 Regal Bank and its directors at the time of the undermentioned financial assistance are guilty of a contravention of s 38(1) read with s 38(3) of the Companies Act.
- 31.2 On or about 6 April 2000 and at Johannesburg or Sandton Regal Bank, by means of a loan, guarantee, the provision of security or otherwise, directly or indirectly, gave financial assistance Metshelf 106 in the amount of R10m for the purpose of or in connection with a purchase by Metshelf 106 of the shares of its holding company, Regal Holdings<sup>21</sup>.
- 31.3 The financial assistance made by Regal Bank to Metshelf 106 did not constitute the lending of money in the ordinary course of the business of Regal Bank as envisaged in s 38(2)(a) of the Companies Act in that:
- 31.3.1 Metshelf 106 was a Mettle SPV;
- 31.3.2 Regal Bank bore the full risk of loss in respect of any diminution in the market price of the Regal Holdings shares purchased by Metshelf 106;
- 31.3.3 The interest on the financial assistance had been capitalised and by the time of curatorship on 26 June 2001 no part of the financial assistance had yet been recovered by Regal Bank;

**[L] Pekane**Fraud

32

32.1 Levenstein and Cohen are guilty of the crime of fraud.

32.2 During or about the period 29 December 2000 to 26 June 2001 and in Johannesburg and / or Sandton Levenstein and Cohen did unlawfully and with the intent to defraud expressly or impliedly and falsely represent<sup>22</sup> to EY and / or the Reserve Bank and / or Regal Bank's depositors and / or Regal Holdings' shareholders:

32.2.1 that on or about 29 December 2000 Regal Bank had made a loan to "Phekani" in the amount of R67 400 808;

32.2.2 that the loan was secured by shares with a market value of approximately R70 million.

32.3 At the time when Levenstein and Cohen made the representations, the representations were false in that no such loan or security existed.

32.4 The misrepresentations were actually or potentially prejudicial to EY and/or the Reserve Bank and/ or Regal Bank's depositors and/or Regal Holdings' shareholders in one or more of the following respects:

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<sup>21</sup> See §18, 25, 53 Part Three; See also *inter alia* DT2:554; I3:25; Strydom : 852.

<sup>22</sup> See §92 Part Two and §51, 65, 83 Part Three; including inter alia E369; E:372; EY110399; EY130116; EY130149; EY140289; EY150027; EY150030; EY150034; EY180128; EY180233; EY180235; K(3)3; U1.4; U1.5; U1.6; U1.7; Cohen 1930; Davis 2878 - 2880; De Castro 2627-2629; Diesel 2628; Levenstein 1710 - 1720; 1749 -1759; Lurie 2544 -2545; 1759; Rod 3166; Strydom 806; 815; 839 - 849.

- 32.4.1 but for the misrepresentations EY would have insisted on a different accounting treatment of the Pekane transaction;
- 32.4.2 the misrepresentations would or could have contributed to EY's audit opinion in respect of the 2001 financial year;
- 32.4.3 EY's audit opinion by EY would or could have influenced Regal Holdings shareholders or potential investors in Regal Holdings shares to buy, sell or hold such shares.
- 32.4.4 EY's audit opinion would or could affect the Reserve Bank supervisory function of Regal Bank, with potential prejudice to its depositors and Regal Holdings' shareholders.

#### Contravention of s249(1) of the Companies Act

33

- 33.1 Levenstein is guilty of a contravention of s 249(1) of the Companies Act.
- 33.2 Levenstein, in a statement, return, report, certificate, financial statement or other document required by or for the purposes of any provision of the Companies Act, made a statement which was false in a material particular, knowing it to be false, by recording, in Regal Bank's accounting records, a false entry reflecting that Regal Bank had made a loan to Phekani in the amount of R67 400 808.

Contravention of s 250(1) of the Companies Act

34

- 34.1 Levenstein is guilty of a contravention of s 250(1) of the Companies Act.
- 34.2 Levenstein was a director or officer of Regal Bank and Regal Holdings and made a false entry in a book, document, financial record or financial statement of Regal Bank or Regal Holdings to the effect that Regal Bank had made a loan to Phekani in the amount of R67 400 808 (including inter alia interest).

Contravention of s 251(1) of the Companies Act

35

- 35.1 Levenstein, Cohen and Diesel are guilty of a contravention of section 251(1) of the Companies Act.
- 35.2 Levenstein, Cohen and Diesel were directors of Regal Bank and Regal Holdings circulated or published or concurred in the making, circulating or publishing of a written statement, report or financial statement in relation to the property or affairs of Regal Bank and Regal Holdings which was false in a material particular in that:
- a written statement by Regal Bank management falsely reflected that Regal Bank had made a loan to Phekani in the amount of

R60,2 million which was secured by shares with a market value of approximately R70 million whilst no such loan or security existed;

- Regal Bank's accounting records falsely reflected that Regal Bank had made a loan to Phekani in the amount of R67 400 808 (including *inter alia* interest) and that the loan was secured by shares with a market of approximately R70 million whilst no such loan or security existed;
- Regal Holdings' Audited results for the year ended 28 February 2001 falsely reflected that Regal Bank had made an advance to Phekani in the amount of R67 400 808 (including *inter alia* interest) whilst no such advance existed; and
- Regal Bank's accounting records for the 2001 financial year and Regal Holdings' Audited results for the year ended 28 February 2001 failed to reflect that, during December 2000, Regal Bank purchased Phekane's 15 454 546 Regal Holdings shares for R60 272 729,40 and that Regal Bank paid the purchase price of the shares to Phekane or its nominee.



**[M] Mettle Reserve Account**Fraud

36

36.1 Levenstein and Davis are guilty of the crime of fraud.

36.2 During or about the period 11 October 2000 to 28 February 2001 and in Johannesburg or Sandton Levenstein and Davis did unlawfully and with the intent to defraud expressly and/or impliedly and falsely represent<sup>23</sup> to EY and/or the Reserve Bank and / or Regal Bank's depositors and/or Regal Holdings' shareholders:

36.2.1 that an account bearing the name "BOE Bank" reflected entries relating to BOE Bank;

36.2.2 that a deposit of R150m was properly allocated to and reflected in the BOE account;

36.2.3 that during or about the period 11 October 2000 to 28 February 2001 the following withdrawals had properly and justifiably been made from the BOE account : R14 740 160, R1 400 000, R5 700 000, R350 000, R157 255 and R290 616 totalling R22 638 031.

36.2.4 that Regal Holdings' before tax income for the 2001 year was R71 537 356;

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<sup>23</sup> See § 86 Part Three; See also *inter alia* EY:140304; I3:11; KD:72; 74; 75; Davis: 2878-2879; 3420-3433

36.3 At the time when Levenstein and Davis made the representations they were false in that :

36.3.1 the BOE Bank account did not in any way relate to BOE Bank but reflected entries relating to certain of the Mettle structured finance deals;

36.3.2 The R150m deposit was irregularly allocated to and reflected in the BOE account in that it was an amount received from Mettle Ltd (or one of its subsidiaries or SPV'S) in respect of the sale by Regal Bank of its 25% Kgoro shares and should properly have been reflected:

36.3.2.1 by crediting an income account with an amount of R150m (the excess of the sales proceeds over the carrying value of the shares); and then debiting the said income account with R150m and crediting a liability account to provide for Regal Bank's obligation in terms of the Kgoro structured finance deal to repurchase its 25% Kgoro shares ,or alternatively;

36.3.2.2 by reflecting separately a liability of R150m in respect of Regal Bank's obligation in terms of the Kgoro structured finance deal to repurchase its 25% Kgoro shares.

36.3.3 The withdrawals were irregular transfers to other, unrelated accounts in Regal Bank's records, made with the purpose to

extinguish debts, reduce expenses or raise income in such accounts so falsely to increase Regal Bank's income.

36.3.4 The consequence of Regal Bank's abovementioned irregular transfers from the BOE account was that Regal Holdings' before tax income for the 2001 year was overstated by at least R22 638 031;

36.4 The misrepresentations were actually or potentially prejudicial to EY and/or the Reserve Bank and/or Regal Bank's depositors and/or Regal Holdings' shareholders.

#### Contravention of s249(1) of the Companies Act

37

37.1 Levenstein and Davis are guilty of a contravention of s 249(1) of the Companies Act.

37.2 Levenstein and Davis, in a statement, return, report, certificate, financial statement or other document required by or for the purposes of any provision of the Companies Act, made a statement which was false in a material particular, knowing it to be false, by recording, in Regal Bank's accounting records, the false entries in the BOE account set out in paragraph 36.

#### Contravention of s 250(1) of the Companies Act

38

- 38.1 Levenstein and Davis are guilty of a contravention of s 250(1) of the Companies Act.
- 38.2 Levenstein and Davis, directors or officers of Regal Bank and Regal Holdings, made false entries in a book, document, financial record or financial statement of Regal Bank by recording, in Regal Bank's accounting records, the false entries in the BOE account set out in paragraph 36.

Contravention of s 251(1) of the Companies Act

39

- 39.1 Levenstein and Davis are guilty of a contravention of s 251(1) of the Companies Act.
- 39.2 Levenstein and Davis, directors or officers of Regal Bank and Regal Holdings, made, circulated or published or concurred in the making, circulating or publishing of a financial statement in relation to the property or affairs of Regal Bank and Regal Holdings which was false in the material particulars set out in paragraph 36.

**[N] Levenstein Data 1****Fraud**

40

40.1 Levenstein and Lurie are guilty of the crime of fraud.

40.2 During or about the period 20 April 1998 to 26 June 2001 and in Johannesburg and / or Sandton Levenstein and / or Lurie did unlawfully and with the intent to defraud expressly and / or impliedly and falsely represent<sup>24</sup> to EY and / or the Reserve Bank and / or Regal Bank's depositors and / or Regal Holdings' shareholders:

40.2.1 that Levenstein Data 1 was a legal person;

40.2.2 that Regal Bank had lent and advanced an amount of R6,5 million to Levenstein Data 1;

40.2.3 that from 20 April 1998 until the date of curatorship the R6,5 million loan attracted interest and remained owing by Levenstein Data 1.

40.3 At the time when Levenstein and Lurie made the representations they were false in that:

40.3.1 Levenstein Data 1 did not exist and was merely an "account heading";

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<sup>24</sup> See §17, 90 Part Three; See also inter alia DT(2)553; EY030283; EY130033; EY130077; EY130132; EY140289; EY140328; EY180128; KD70; Diesel 2634-2635; Levenstein 1774-1781; Lurie 2546-2551; Store 3409-3410; Strydom 909.

- 40.3.2 Regal Bank could therefore not and did not lend and advance R6,5 million or any other amount to Levenstein Data 1;
- 40.3.3 Regal Bank never owed the amount of the purported loan of R6,5 million to Levenstein Data 1 and the loan could not attract interest.
- 40.4 The misrepresentations were actually or potentially prejudicial to EY and/or the Reserve Bank and/ or Regal Bank's depositors and/or Regal Holdings' shareholders.

#### Contravention of s 249 of the Companies Act

41

- 41.1 Levenstein and Davis are guilty of a contravention of s 249(1) of the Companies Act.
- 41.2 Levenstein and Davis, in a statement, return, report, certificate, financial statement or other document required by or for the purposes of any provision of the Companies Act, made a statement which was false in a material particular, knowing it to be false, by recording, in Regal Bank's accounting records, a false entry reflecting an overnight loan / "call placement" of R6,5 million plus capitalised interest to Levenstein Data 1.

Contravention of s 250(1) of the Companies Act

42

- 42.1 Levenstein and Davis are guilty of a contravention of s 250(1) of the Companies Act.
- 42.2 Levenstein and Davis, directors or officers of Regal Bank and Regal Holdings, made a false entry in a book, document, financial record or financial statement of Regal Bank or Regal Holdings:
  - 42.2.1 by recording, in Regal Bank's accounting records, a false entry reflecting an overnight loan / "call placement" of R6,5m plus capitalised interest to Levenstein Data 1 whilst no such overnight loan or "call placement" existed.
  - 42.2.2 by falsely reflecting in Regal Holdings' 1999, 2000 and 2001 Audited results and in Regal Bank and Regal Holdings' 1999 and 2000 annual financial statements in respect of Levenstein Data 1 a loan or advance of R6,5m plus capitalised interest whilst no such loan or advance existed.

Contravention of s 251(1) of the Companies Act

43

- 43.1 Levenstein and Lurie are guilty of a contravention of s 251(1) of the Companies Act.

43.2 Levenstein and Lurie, directors or officers of Regal Bank and Regal Holdings, made circulated or published or concurred in the making, circulating or publishing of a financial statement in relation to the property or affairs of Regal Bank and Regal Holdings which was false by falsely reflecting in Regal Holdings' 1999, 2000 and 2001 Audited results and in Regal Bank and Regal Holdings' 1999 and 2000 annual financial statements in respect of Levenstein Data 1 a loan or advance of R6,5 million plus capitalised interest whilst no such loan or advance existed.

## Fraud

### Alternatively to paragraphs 40 to 43 above

44

44.1 Levenstein and Lurie are guilty of the crime of fraud.

44.2 During or about the period 20 April 1998 to 26 June 2001 and in Johannesburg or Sandton Levenstein and Lurie did unlawfully, with the intent to defraud, make the following misrepresentations to EY in that they (under circumstances where they had a duty to do so) failed to disclose EY:

44.2.1 that Levenstein Data 1 was a firm owned by Levenstein and/or Lurie;



- 44.2.2 that the purpose of the R6,5m loan by Regal Bank to Levenstein Data 1 on 20 April 1998 was to render financial assistance to it to purchase Regal Holdings shares;
- 44.3 During the same time and place Levenstein and Lurie did unlawfully, with the intent to defraud, furthermore expressly or impliedly and falsely represent to EY that the loan and advance to Levenstein Data 1 was secured by a pledge of cash for the amount of the advance in the form of a deposit of R7,8m. At the time when Levenstein or Lurie made this misrepresentation it was false in that no such security existed.
- 44.4 Paragraph 40.4 is repeated mutatis mutandis.

#### Contravention of s 38 of the Companies Act

45

- 45.1 Regal Bank and its directors at the time of the undermentioned financial assistance to Levenstein Data 1 are guilty of a contravention of s 38(1) read with s 38(3) of the Companies Act.
- 45.2 On or about 20 April 1998 and at Johannesburg or Sandton Regal Bank, by means of a loan, guarantee, the provision of security or otherwise, directly or indirectly, gave financial assistance in the amount of R6.5m for the purpose of or in connection with a purchase by Levenstein Data 1 or subscription made or to be made by Levenstein Data 1 of or for shares of its holding company, Regal Holdings.

45.3 The financial assistance made by Regal Bank to Levenstein Data 1 did not constitute the lending of money in the ordinary course of the business of Regal Bank as envisaged in section 38(2)(a) of the Companies Act in that:

45.3.1 Levenstein Data 1 was a related party;

45.3.2 the only security that Regal Bank obtained for the financial assistance was a pledge of the Regal Holdings shares concerned;

45.3.3 the interest on the financial assistance had been capitalised and by the time of curatorship on 26 June 2001 no part of the financial assistance had yet been recovered by Regal Bank.

#### Contravention of s 251(1) of the Companies Act

46

46.1 Levenstein and Lurie are guilty of a contravention of s 251(1) of the Companies Act.

46.2 Levenstein and Lurie, directors of Regal Bank and Regal Holdings, made, circulated or published or concurred in the making, circulating or publishing of a financial statement in relation to the property or affairs of Regal Bank and Regal Holdings which was false by falsely failing to disclose in Regal Holdings' 1999, 2000 and 2001 audited results and in Regal Bank and Regal Holdings' 1999 and 2000 annual financial statements in respect of Levenstein Data 1 that a loan or advance of

R6,5m plus capitalised interest had in substance been made to a director or directors of Regal Bank and Regal Holdings, namely Levenstein and / or Lurie.

### Contravention of s 226 of the Companies Act

47

47.1 Levenstein and / or Lurie are guilty of a contravention of s 226(1)<sup>25</sup> read with ss226(4) and (5) of the Companies Act.

47.2 Levenstein and/or Lurie were directors of Regal Bank and the owner(s) of Levenstein Data 1 and authorised, permitted or were partie(s) to the making of a loan contrary to the provisions of s 226 of the Companies Act in that he authorised, permitted or was a party to the making by Regal Bank of an overnight loan of R6,5m to Levenstein Data 1 under circumstances where the exclusionary provisions set out in section 226(2) of the Companies Act do not apply.

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<sup>25</sup> s 226 **Prohibition of loans to, or security in connection with transactions by, directors and managers**

(1) No company shall directly or indirectly make a loan to-

(a) any director or manager of-

- (i) the company; or
- (ii) its holding company;

(4) Any director or officer of a company who authorizes, permits or is a party to the making of any loan or the provision of any security contrary to the provisions of this section, shall-

(a) be liable to indemnify the company and any other person who had no actual knowledge of the contravention, against any loss directly resulting from the invalidity of such loan or security; and

(b) be guilty of an offence.

(5) For the purposes of subsection (4) 'director or officer of a company' includes, where the company is a subsidiary, any director or officer of its holding company.

**[O] J L Associates & Trust**Fraud

48

48.1 Levenstein and Lurie are guilty of the crime of fraud.

48.2 During or about the period 9 April 1998 to 26 June 2001 and in Johannesburg or Sandton Levenstein and Lurie did unlawfully and with the intent to defraud expressly or impliedly and falsely represent<sup>26</sup> to EY and / or the Reserve Bank and/or Regal Bank's depositors and/or Regal Holdings' shareholders:

48.2.1 that J L Associates & Trust was a legal person;

48.2.2 that Regal Bank had lent and advanced an amount of R13m to J L Associates & Trust;

48.2.3 that from 9 April 1998 until the date of curatorship the R13m loan attracted interest and remained owing by J L Associates & Trust.

48.3 At the time when Levenstein and Lurie made the representations they were false in that:

48.3.1 J L Associates & Trust did not exist and was merely an "account heading";

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<sup>26</sup> See §17 and 19 Part Three; See also inter alia DT(2)553; EY030283; EY130033; EY130077;

- 48.3.2 Regal Bank could not and did not lend and advance R13 million or any other amount to J L Associates & Trust;
- 48.3.3 Regal Bank never owed the amount of the purported loan of R13m to J L Associates & Trust and the loan could not attract interest.
- 48.4 The misrepresentations were actually or potentially prejudicial to EY and/or the Reserve Bank and/or Regal Bank's depositors and/or Regal Holdings' shareholders.

#### Contravention of s 249 of the Companies Act

49

- 49.1 Levenstein and Davis are guilty of a contravention of s 249(1) of the Companies Act.
- 49.2 Levenstein and Davis, in a statement, return, report, certificate, financial statement or other document required by or for the purposes of any provision of the Companies Act, made a statement which was false in a material particular, knowing it to be false, by recording, in Regal Bank's accounting records, a false entry reflecting an overnight loan / "call placement" of R13 plus capitalised interest to J L Associates & Trust.

Contravention of s 250(1) of the Companies Act

50

- 50.1 Levenstein and Davis are guilty of a contravention of s 250(1) of the Companies Act.
- 50.2 Levenstein and Davis, directors or officers of Regal Bank and Regal Holdings, made a false entry in a book, document, financial record or financial statement of Regal Bank or Regal Holdings:
  - 50.2.1 by recording, in Regal Bank's accounting records, a false entry reflecting an overnight loan / "call placement" of R13 million plus capitalised interest to J L Associates & Trust whilst no such overnight loan or "call placement" existed.
  - 50.2.2 by falsely reflecting in Regal Holdings' 1999, 2000 and 2001 Audited results and in Regal Bank and Regal Holdings' 1999 and 2000 annual financial statements in respect of J L Associates & Trust a loan or advance of R13m plus capitalised interest whilst no such loan or advance existed.

Contravention of section 251(1) of the Companies Act

51

51.1 Levenstein and Lurie are guilty of a contravention of s 251(1) of the Companies Act.

51.2 Levenstein and Lurie, directors or officers of Regal Bank and Regal Holdings, made, circulated or published or concurred in the making, circulating or publishing of a financial statement in relation to the property or affairs of Regal Bank and Regal Holdings which was false by reflecting in Regal Holdings' 1999, 2000 and 2001 Audited results and in Regal Bank and Regal Holdings' 1999 and 2000 annual financial statements in respect of J L Associates & Trust a loan or advance of R13m plus capitalised interest whilst no such loan or advance existed.

FraudAlternatively to paragraphs 48 to 51

52

52.1 Levenstein and Lurie are guilty of the crime of fraud.

52.2 During or about the period 9 April 1998 to 26 June 2001 and in Johannesburg or Sandton Levenstein and Lurie did unlawfully, with the intent to defraud, make the following misrepresentations to EY in that they (under circumstances where they had a duty to do so) failed to disclose EY:

- 52.2.1 that J L Associates & Trust was a firm owned by Levenstein or Lurie;
- 52.2.2 that the purpose of the R13m loan and advance by Regal Bank to J L Associates & Trust on 9 April 1998 was to render financial assistance to it to purchase Regal Holdings shares;
- 52.3 Paragraphs 48.4 is repeated mutatis mutandis

#### Contravention of s 38 of the Companies Act

53

- 53.1 Regal Bank and all its directors at the time of the undermentioned financial assistance to J L Associates & Trust are guilty of a contravention of s 38(1) read with s 38(3) of the Companies Act.
- 53.2 On or about 9 April 1998 and at Johannesburg or Sandton Regal Bank, by means of a loan, guarantee, the provision of security or otherwise, directly or indirectly, gave financial assistance in the amount of R13m for the purpose of or in connection with a purchase by J L Associates & Trust or subscription made or to be made by J L Associates and Trust of or for shares of its holding company, Regal Holdings.
- 53.3 The financial assistance made by Regal Bank to JL Associates & Trust did not constitute the lending of money in the ordinary course of the business of Regal Bank as envisaged in s 38(2)(a) of the Companies Act in that :
  - 53.3.1 JL Associates & Trust was a related party;



- 53.3.2 the only security that Regal Bank obtained for the financial assistance was a pledge of the Regal Holdings shares concerned;
- 53.3.3 the interest on the financial assistance had been capitalised and by the time of curatorship on 26 June 2001 only part of the financial assistance had yet been recovered by Regal Bank;
- 53.3.4 shortly before curatorship Levenstein instructed Diesel to transfer an amount of R15m from the Mettle Reserve account (containing Regal Bank's money) to the J L Associates & Trust overnight loan account.

#### Contravention of s 251(1) of the Companies Act

54

- 54.1 Levenstein and Lurie are guilty of a contravention of section 251(1) of the Companies Act.
- 54.2 Levenstein and Lurie, directors of Regal Bank and Regal Holdings, made, circulated or published or concurred in the making, circulating or publishing of a financial statement in relation to the property or affairs of Regal Bank and Regal Holdings which was false by falsely failing to disclose in Regal Holdings' 1999, 2000 and 2001 Audited results and in Regal Bank and Regal Holdings' 1999 and 2000 annual financial statements in respect of J L Associates & Trust that a loan or advance

of R13 million plus capitalised interest had in substance been made to a director or directors of Regal Bank and Regal Holdings, namely Levenstein and/or Lurie.

Contravention of section 226 of the Companies Act

55

55.1 Levenstein and/or Lurie are guilty of a contravention of section 226(1) read with sections 226(4) and (5) of the Companies Act.

55.2 Levenstein and/or Lurie, director(s) of Regal Bank and the owner(s) of J L Associates & Trust, authorised, permitted or were partie(s) to the making of a loan contrary to the provisions of s 226 of the Companies Act in that he/they authorised, permitted or was partie(s) to the making by Regal Bank of an overnight loan of R13m to J L Associates & Trust under circumstances where the exclusionary provisions set out in s 226(2) of the Companies Act do not apply.

**[P] Forfin Finance (Pty) Ltd (“Forfin”)**

Contravention of s 38 of the Companies Act

56

- 56.1 Regal Bank and its directors at the time of the undermentioned financial assistance to Forfin are guilty of a contravention of s 38(1) read with s 38(3) of the Companies Act.
- 56.2 On or about 3 April 1998 and at Johannesburg or Sandton Regal Bank, by means of a loan, guarantee, the provision of security or otherwise, directly or indirectly, gave financial assistance in the amount of R3 997 500 for the purpose of or in connection with a purchase by Forfin or subscription made or to be made by Forfin of or for shares of its holding company, Regal Holdings<sup>27</sup>.
- 56.3 The financial assistance made by Regal Bank to Forfin did not constitute the lending of money in the ordinary course of the business of Regal Bank as envisaged in s 38(2)(a) of the Companies Act in that:
- 56.3.1 Forfin was a related party;
  - 56.3.2 the only security that Regal Bank obtained for the financial assistance was a pledge of the Regal Holdings shares concerned;
  - 56.3.3 the interest on the financial assistance had been capitalised and by the time of curatorship on 26 June 2001 no part of the financial assistance had yet been recovered by Regal Bank;
  - 56.3.4 Regal Bank from time to time took unusual steps to conceal the repayment history in respect of the financial assistance;

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<sup>27</sup>

See § 17 and 90 Part Three. See also DT(2)553; EY030283; EY130033; EY130077; EY130132; EY140289; EY150034; EY180128; KD2; vdW350; 352; 354; 355; 356; 360-363; 369-370; 388-402; Diesel 3072; Levenstein 1774-1777; 2496 -2499; 3492-3503; van der Walt : 3070.

56.3.5 shortly before curatorship Levenstein instructed Diesel to transfer an amount of R7 million from the Mettle Reserve account (containing Regal Bank's money) to the Forfin overnight loan account.

**[Q] Shareholders Trust**

Contravention of s 38 of the Companies Act

57

- 57.1 Regal Bank and all its directors at the time of the undermentioned financial assistance to the Shareholders Trust are guilty of a contravention of s 38(1) read with s 38(3) of the Companies Act.
- 57.2 During or about the period 5 March 1999 to 26 June 2001 and at Johannesburg or Sandton Regal Bank, by means of a loan, guarantee, the provision of security or otherwise, directly or indirectly, gave financial assistance in the amount of at least R46,6m for the purpose of or in connection with purchases by Shareholders Trust for shares of its holding company, Regal Holdings<sup>28</sup>.
- 57.3 The financial assistance made by Regal Bank to Shareholders Trust did not constitute the lending of money in the ordinary course of the business of Regal Bank as envisaged in s 38(2)(a) of the Companies Act in that:

- 57.3.1 Shareholders Trust was a related party;
- 57.3.2 there was an unusual volume of purchases of Regal Holdings shares by the Shareholders Trust;
- 57.3.3 Regal Bank did not obtain any security for the financial assistance;
- 57.3.4 The interest on the financial assistance had been capitalised and by the time of curatorship on 26 June 2001 the financial assistance had not been recovered by Regal Bank.
- 57.3.5 the purchases of Regal Holdings shares by the Shareholders Trust were made to support the Regal Holdings share price.

## **[R] Loans to Directors**

### Fraud

58

- 58.1 Levenstein is guilty of the crime of fraud.
- 58.2 During or about the period December 1996 to June 2000 and in Johannesburg or Sandton Levenstein did unlawfully and with the intent to defraud expressly or impliedly and falsely represent<sup>29</sup> to EY and/or the Reserve Bank and/or Regal Bank's depositors and/or Regal Holdings' shareholders and/or the SARS that Regal Bank had made

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<sup>28</sup> §17 Part Three; DT(1)32, 53-58; DT(2)553; K(3)26.

<sup>29</sup> §89-90 Part Three; See also inter alia DT(1)13; DT(1)38; E289; EY130080; Levenstein 1527-1534.

*bona fide* loans and advances to the Shareholders Trust totalling the amount of R2 629 099.

59

59.1 At the time when Levenstein made the representations they were false in that:

59.1.1 Regal Bank did not make loans and advances to the Shareholders Trust in the above amounts but paid bonuses or made advances to the directors;

59.1.2 Regal Bank made the payments to directors and managers from a bank account outside its accounting systems;

59.1.3 Regal Bank did not record the payments in its accounting records;

59.1.4 on the instructions or with the knowledge of Levenstein, and in order to conceal the true nature thereof, Regal Bank falsely debited the payments to a discretionary loan account in the name of the Shareholders Trust.

59.2 The misrepresentations were actually or potentially prejudicial to EY and/or the Reserve Bank and/or Regal Bank's depositors and/or Regal Holdings' shareholders and / or the SARS.

Contravention of s 226 of the Companies Act

60

60.1 Levenstein is guilty of a contravention of section 226(1) read with sections 226(4) and (5) of the Companies Act.

60.2 During or about the period December 1996 to June 2000 and at Johannesburg or Sandton Levenstein authorised, permitted or was a party to the making of a loans to directors of Regal Bank and Regal Holdings totalling R2 629 099.

60.3 The exclusionary provisions set out in s 226(2) of the Companies Act do not apply in that:

60.3.1 the members of Regal Bank did not give its prior consent to the loans and no specific special resolution exists in regard to the loans;

60.3.2 Regal Bank did not make the loans *bona fide* in the ordinary course of its business in that:

- the loans had not been approved by Regal Bank's credit committee or board of directors;
- Regal Bank did not record the loans in its accounting system;
- Regal Bank channelled the loans through a special bank account outside of its accounting system in order to conceal the fact that they were loans to the directors;
- Regal Bank did not charge interest on the loans;

- the loans extended over an undetermined and unusually long period of time without any attempt to recover the loans or any part thereof.

#### Contravention of s 249(1) of the Companies Act

61

- 61.1 Levenstein is guilty of a contravention of s 249(1) of the Companies Act.
- 61.2 Levenstein, in a statement, return, report, certificate, financial statement or other document required by or for the purposes of any provision of the Companies Act, made a statement which was false in a material particular, knowing it to be false, by recording, in Regal Bank's accounting records, false entries reflecting that Regal Bank had made a loan to the Shareholders' Trust totalling R 2 629 099 during or about the period December 1996 to June 2000.

#### Contravention of s 250(1) of the Companies Act

62

- 62.1 Levenstein and Lurie are guilty of a contravention of s 250(1) of the Companies Act.
- 62.2 Levenstein and Lurie, directors of Regal Bank and Regal Holdings, made false entries in a book, document, financial record or financial statement of Regal Bank or Regal Holdings to the effect that Regal



Bank had made a loan to the Shareholders' Trust totalling R2 629 099 during or about the period December 1996 to June 2000.

Contravention of s 251(1) of the Companies Act

63

63.1 Levenstein and Lurie are guilty of a contravention of s 251(1) of the Companies Act.

63.2 Levenstein, directors of Regal Bank and Regal Holdings, made, circulated or published or concurred in the making, circulating or publishing of a written statement, report or financial statement in relation to the property or affairs of Regal Bank and Regal Holdings which was false in a material particular in that:

63.2.1 Regal Bank's accounting records falsely reflected that Regal Bank had made loans to The Shareholders' Trust totalling R 2 629 099 during or about the period December 1996 to June 2000 whilst no such loan existed;

63.2.2 Regal Holdings' Audited results for the year ended 28 February 2000 falsely reflected that Regal Bank had made advances to the Shareholders' Trust totalling R2 629 099 whilst no such advances existed; and

63.2.3 Regal Bank's accounting records for the 2000 financial year and Regal Holdings' Audited results for the year ended 29 February 2000 failed to reflect that, during or about December 1996 to

June 2000, Regal Bank had either made loans or advances to directors or managers or had incurred expenditure (paid bonuses) totalling R2 629 099.

**[S] Advertising costs and Donations**

Fraud

64

- 64.1 Levenstein is guilty of the crime of fraud.
- 64.2 During or about the period December 1996 to June 2000 and in Johannesburg or Sandton Levenstein did unlawfully and with the intent to defraud expressly or impliedly and falsely represent<sup>30</sup> to EY and/or the Reserve Bank and/or Regal Bank's depositors and/or Regal Holdings' shareholders that Regal Bank had made *bona fide* loans and advances to the Shareholders Trust totalling R55 951 and R145 382.
- 64.3 At the time when Levenstein made the representations they were false in that:
  - 64.3.1 Regal Bank did not make loans and advances to the Shareholders Trust in the above amounts but in fact Regal Bank paid advertising costs in the total amount of R55 951 incurred by it to the suppliers of those services;

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<sup>30</sup> See inter alia DT(1)13-14.

- 64.3.2 Regal Bank made donations in the total amount of R145 382 to various charitable and religious organisations;
- 64.3.3 Regal Bank made the payments in respect of advertising costs and donations from a bank account outside its accounting systems;
- 64.3.4 Regal Bank did not record the payments in its accounting records;
- 64.3.5 on the instructions or with the knowledge of Levenstein, and in order to conceal the true nature thereof, Regal Bank falsely debited the amounts to a discretionary loan account in the name of the Shareholders Trust.

64.4 The misrepresentations were actually or potentially prejudicial to EY and / or the Reserve Bank and/ or Regal Bank's depositors and / or Regal Holdings' shareholders.

#### Contravention of s 249(1) of the Companies Act

65

- 65.1 Levenstein is guilty of a contravention of s 249(1) of the Companies Act.
- 65.2 Levenstein, in a statement, return, report, certificate, financial statement or other document required by or for the purposes of any provision of the Companies Act, made a statement which was false in a material particular, knowing it to be false, by recording, in Regal Bank's accounting records, false entries reflecting that Regal Bank had made

loans to the Shareholders' Trust in the amounts of respectively R55 951 and R145 382 during or about the period December 1996 to June 2000.

Contravention of s 250(1) of the Companies Act

66 Levenstein is guilty of a contravention of s 250(1) of the Companies Act.

67 Levenstein, a director or officer of Regal Bank and Regal Holdings, made false entries in a book, document, financial record or financial statement of Regal Bank or Regal Holdings to the effect that Regal Bank had made loans to the Shareholders' Trust totalling amounts of respectively R55 951 and R145 382 during or about the period December 1996 to June 2000.

Contravention of s 251(1) of the Companies Act

68

68.1 Levenstein is guilty of a contravention of s 251(1) of the Companies Act.

68.2 Levenstein, a director of Regal Bank and Regal Holdings, made, circulated or published or concurred in the making, circulating or publishing of a written statement, report or financial statement in relation to the property or affairs of Regal Bank and Regal Holdings which was false in a material particular in that:

- Regal Bank's accounting records falsely reflected that Regal Bank had made loans to the Shareholders' Trust totalling amounts of

R55 951 and R145 382 during or about the period December 1996 to June 2000 whilst no such loans existed;

- Regal Holdings' Audited results for the year ended 28 February 2000 falsely reflected that Regal Bank had made advances to the Shareholders' Trust totalling amounts of R55 951 and R145 382 whilst no such advances existed; and
- Regal Bank's accounting records for the 2000 financial year and Regal Holdings' Audited results for the year ended 29 February 2000 failed to reflect that, during or about December 1996 to June 2000, Regal Bank had incurred advertising expenditure and donations of R55 951 and R145 382.

**[T] 2001 Levenstein's Director's Remuneration Notification**

Fraud

69

69.1 Levenstein is guilty of the crime of fraud.

69.2 During or about the first half of 2001 in Johannesburg or Sandton Levenstein did unlawfully and with the intent to defraud expressly or impliedly and falsely represent<sup>31</sup> to EY and/or the Reserve Bank and/or Regal Bank's depositors and/or Regal Holdings' shareholders that his total directors' remuneration for the 2000 financial year was R561 500.

69.3 At the time when Levenstein made the representation it was false in that, in respect of the 2001 financial year, he earned the following additional remuneration:

69.3.1 An amount of R650 000 paid to him by Regal Holdings during or about April 2000 (and falsely described as a dividend);

69.3.2 amounts paid to Levenstein by Regal Bank through a Standard Bank account outside Regal Bank's accounting records during the period 1 March 2000 to 28 February 2001 totalling R20 000.

69.3.3 a bonus of R460 000.

69.4 The misrepresentation was actually or potentially prejudicial to EY and / or the Reserve Bank and/ or Regal Bank's depositors and / or Regal Holdings' shareholders.

#### Contravention of s 249(1) of the Companies Act

70

70.1 Levenstein is guilty of a contravention of s 249(1) of the Companies Act.

70.2 Levenstein, in a statement, return, report, certificate, financial statement or other document required by or for the purposes of any provision of the Companies Act, made a statement which was false in a material particular, knowing it to be false, by recording, in his 2000 directors

remuneration notification, that his total directors' remuneration for the 2000 financial year was R561 500 whereas, during the 2000 year he received the additional remuneration set out in paragraph 69.

#### Contravention of s 251(1) of the Companies Act

71

71.1 Levenstein, is guilty of a contravention of s 251(1) of the Companies Act.

71.2 Levenstein, a director of Regal Bank and Regal Holdings, made, circulated or published or concurred in the making, circulating or publishing of a written statement, report or financial statement in relation to the property or affairs of Regal Bank and Regal Holdings which was false in a material particular in that, in his directors' remuneration for the 2001 financial year, he recorded his total remuneration for the 2001 year was R561 500 whereas, during such year he received the additional remuneration set out in paragraph 69.

**[U] DI Returns**Contravention of s 251(1) of the Companies Act

72

72.1 Levenstein is guilty of a contravention of 251(1) of the Companies Act.

72.2 Levenstein was a director of Regal Bank and Regal Holdings and made, circulated or published or concurred in the making, circulating or publishing of a certificate, written statement, report or financial statement in relation to the property or affairs of Regal Bank and Regal Holdings in that Levenstein procured the submission of DI returns to the Reserve Bank which were false in the following material particulars:<sup>32</sup>

72.2.1 In Regal Bank's DI 510 return as at 31 December 1999 Regal Bank reflects an amount of R235 650 000 as a deposit with BOE Bank. That entry was false. The relevant investment was not an investment with BOE Bank. The bulk of the investment related to the Tradequick and RVM structured finance deals. The largest part of the investment was an investment in the preference shares of certain Mettle subsidiaries or SPV's, the purchase price of preference shares having been paid by Regal Bank.

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<sup>32</sup> See §107 Part Two and §87 Part Three; See also inter alia EY020257; EY180268; EY180269 -180272; F159.1; F181.1; J13; Strydom 3455 - 3457; Zarca : 3047 - 3053.



72.2.2 In Regal Bank's DI 510 return as at 31 March 2001 Regal Bank reflected total large credit exposures of R438 157 000. R303 000 000 of this amount was reflected as an investment with BOE Bank. The balance of R135 137 000 was reflected as loans to "Phekani Investments" (R66 862 000) and the Incentive Trust (R68 295 000). The DI 510 return was false in the following respects:

72.2.2.1 the total large credit exposure as at 31 March 2001 was not R438 157 000, but in fact R775 706 000 (a difference of R337 549 000);

72.2.2.2 whilst Regal Bank reflected a deposit of R303 000 000 with BOE Bank as at the relevant date there was in fact was no such deposit;

72.2.2.3 Regal Bank reflected a loan of R66 862 000 as a loan to Phekani, whilst in fact it there was no loan to Phekani;

72.2.2.4 as at the relevant date Regal Bank had large credit exposures to RVM, New Heights, Tradequick, Metshelf 106 and Mettle in a total amount of R588 674 000; Regal Bank failed to disclose any of these exposures.

72.2.3 In Regal Bank's DI 400 return as at 31 March 2001 Regal Bank reflected capital requirements of R155 347 000 instead of R205 035 000 (a difference of R49 688 000).

The incorrect calculation was based on inter alia the false statements in inter alia Regal Bank's abovementioned DI510, hence also the false DI 400 return.

72.2.4 In Regal Bank's DI310 return as at 31 March 2001 Regal Bank reflected a minimum reserve balance of R15 469 000 instead of R27 544 000 (a difference of R12 075 000).

### Contravention of s 75 of the Banks Act

73

73.1 Regal Bank is guilty of a contravention of ss91<sup>33</sup> read with s75<sup>34</sup> of the Banks Act.

Regal Bank contravened s91 read with s75 of the Banks Act as set out in paragraph 72.

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<sup>33</sup> s 91 **Offences and penalties**

(1) Any person who-

- (a) fails to comply with a direction under section 7;
  - (aA) in completing any questionnaire contemplated in section 1 (1A) (c) furnishes the Registrar with any information which to the knowledge of such person is untrue or misleading in any material respect; or
- (b) contravenes or fails to comply with a provision of section 7 (3), (4) or (5), 34, 35, 37 (1), 38 (1), 39, 41, 42 (1), 52 (1) or (4), 53, 55, 58, 59, 61 (2), 65, 66, 67, 70 (2), (2A) or (2B), 70A, 72, 73, 75, 76, 77, 78 (1) or (3), 79, 80 or 84 (2). shall be guilty of an offence.

<sup>34</sup> s 75 **Returns**

(1) A bank shall, in order to enable the Registrar to determine-

- (a) whether the bank is complying with the provisions of-
    - (i) sections 70 and 72; or
    - (ii) section 10 of the South African Reserve Bank Act, 1989 (Act 90 of 1989); or
  - (b) the nature and amounts of the bank's assets, liabilities and contingent liabilities, furnish the Registrar, subject to the provisions of subsection (3A), with returns.
- (2) .....
- (3) A bank shall, in addition to the returns referred to in subsection (1), furnish the Registrar, subject to the provisions of subsection (3A), with the prescribed returns, including returns relating to the extent and management of risk exposures in the conduct of its business.

**[V] 2001 Audited Results of Regal Holdings**

74

74.1 Levenstein and Davis are guilty of the crime of fraud.

74.2 On or about 30 April 2000 and in Johannesburg or Sandton Levenstein and Davis did unlawfully and with the intent to defraud expressly and / or impliedly and falsely represent<sup>35</sup> to EY and / or the Reserve Bank and / or Regal Bank's depositors and / or Regal Holdings' shareholders that the audited income before tax for the year ended 28 February 2001 was R71.5 million whereas the profits should have been reduced by at least the following items:

74.2.1 branding income of R5,5 million recognised in the 2000 financial year;

74.2.2 branding income of R20.5 million recognised in the 2001 financial year;

74.2.3 income reflected as received from Elul in respect of a branding fee R2.7 million;

74.2.4 expenditure of Regal Bank of approximately R20 million that had been falsely credited to other expenditure/income and debited to branding work in progress during the relevant six month period and transferred to the BOE Bank account at

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(3A) The returns referred to in subsections (1) and (3) shall be prepared in conformity with generally accepted accounting practice and shall be furnished to the Registrar in respect of such period, at such times and on such a form as may be prescribed.

<sup>35</sup>

See §94 and 103 Part Two; §50, 55-59, 69 and 83 Part Three; See also inter alia EY110224; EY110342;

year end. (The amount applicable to the six months cannot be determined by the commissioner.);

74.2.5 a transfer of approximately R6 million into the Phekani loan account in respect of a debit which was probably irrecoverable.

74.3 At the same time and place Levenstein and Davis, with the intent to defraud, made further misrepresentations in that they (under circumstances where they had a duty to do so) failed to disclose to EY, the Reserve Bank, Regal Bank's depositors and Regal Holdings' shareholders that Regal Bank was committed to issue 5 million shares to Levenstein for no consideration.

74.4 The misrepresentations were actually or potentially prejudicial to EY and / or the Reserve Bank and/ or Regal Bank's depositors and / or Regal Holdings' shareholders.

#### Contravention of s 249(1) of the Companies Act

75

75.1 Levenstein and Davis are guilty of a contravention of s 249(1) of the Companies Act.

75.2 Levenstein and Davis, in a statement, return, report, certificate, financial statement or other document required by or for the purposes of any

provision of the Companies Act, made a statement which was false in a material particular, knowing it to be false, by recording, in Regal Bank's accounting records, a false entry reflecting the items set out in paragraph 74.

#### Contravention of s 250(1) of the Companies Act

76

76.1 Levenstein and Davis are guilty of a contravention of s 250(1) of the Companies Act.

76.2 Levenstein and Davis were directors or officers of Regal Bank and Regal Holdings and made a false entries in a book, document, financial record or financial statement of Regal Bank or Regal Holdings by recording, in Regal Bank's accounting records, the entries set out in paragraph 74.

#### Contravention of s 251(1) of the Companies Act

77

77.1 Levenstein, and Davis are guilty of a contravention of s 251(1) of the Companies Act.

77.2 Levenstein, and Davis were directors or officers of Regal Bank and Regal Holdings and made, circulated or published or concurred in the making, circulating or publishing of a financial statement in relation to

the property or affairs of Regal Bank and Regal Holdings which was false in the material particulars set out in paragraph 74.

Contravention of s 305(1) of the Companies Act

78

- 78.1 Levenstein and Davis are guilty of a contravention of s 305(1) read with s 308 of the Companies Act.
- 78.2 On or about 25 September 2000 Levenstein, and Davis, directors or officers of Regal Holdings, failed to take all reasonable steps to secure that the Regal Holdings annual financial statements complied with the provisions of s 305 of the Companies Act.
- 78.3 The Regal Holdings' 2000 interim results did not comply with the provisions of s 305 of the Companies Act in one or more of the respects set out in paragraph 74.

**[W] Manipulation of Regal Bank's Accounting records to increase profits or hide losses**

79

79.1 Regal Bank, Levenstein, Davis and de Castro are guilty of a contravention of s 284(4) read with s 284(1) of the Companies Act<sup>36</sup>.

79.2 Regal Bank failed to comply with the provisions of s 284(1) of the Companies Act in that the accounting records kept by it failed fairly to represent the state of affairs and business of Regal Bank and to explain the transactions and financial position of the trade or business of Regal Bank in the following respects<sup>37</sup> :

79.2.1 During or about April 2001 Levenstein issued an instruction that Regal Banks depreciation rates on fixed assets be adjusted downwards. The rates to which certain categories of fixed assets were being depreciated were not in accordance with reasonable and market related estimates of

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<sup>36</sup> s 284 **Duty of company to keep accounting records**

(1) Every company shall keep in one of the official languages of the Republic such accounting records as are necessary fairly to present the state of affairs and business of the company and to explain the transactions and financial position of the trade or business of the company, including ...

(4) (a) Any company which fails to comply with any provision of this section and every director or officer thereof who is a party to such failure or who fails to take all reasonable steps to secure compliance by the company with any such provision, shall be guilty of an offence.

(b) In any proceedings against any director or officer of a company in respect of an offence consisting of a failure to take reasonable steps to secure compliance by a company with the requirements of this section, it shall be a defence to prove that the accused had reasonable grounds for believing and did believe that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty and that the accused had no reason to believe that the said person had failed in any way to discharge that duty.

the useful life of the assets concerned: software was depreciated at 10% per annum instead of the norm of 50% per annum; computer equipment was depreciated at 10% per annum instead of the norm of 33 1/3 per annum; restraint of trade payments were capitalised at 5% per annum whilst the restraints concerned covered a five year period and should have been depreciated at 20% per annum.

79.2.2 During or about April 2001, Levenstein instructed de Castro to debit goodwill and credit motor vehicles with an amount of R407 551,05 in respect of “Cars taken by Jack Probart and Gerhardt van Niekerk as restraint payments in lieu of shares”. Regal Bank was writing these amounts off over a 20-year period. At an unknown date Levenstein instructed de Castro to debit goodwill and credit motor vehicles with an amount of R420 897,81 in respect of “restraint payments” to Johan van Zyl and Koos van Rensburg. Regal Bank was writing these amounts off over a 20-year period. The above amounts should have been charged to salaries immediately; alternatively, the amounts should have been written off over the period of the restraint.

79.3 During or about April 2001 Levenstein instructed de Castro to revalue Regal Bank’s furniture and art. A revaluation of R3,5 million was

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<sup>37</sup> § 76, 78, 83, 84 Part Three. See also inter alia F159.2; F159.3; K(3) 13; TdeC 2; 5; 35; 43; 45; 48; 50; 59; Davis: 3426 -3427; de Castro 3385 –3389; Zarca 3052 - 3057.



credited to a deferred income account and R600 000 of this amount was recognised by Regal Bank as income. There was no market-related basis for the revaluation.

- 79.4 During or about June 2001 Levenstein instructed de Castro to debit Pekane shares/advances with R18.2 million and to credit "Mark / Market income" with R2 million and to credit the "Provision / reserve account Pekane" with R16,2 million. Levenstein further instructed de Castro that each month thereafter R2 million was to be reflected at mark / market income. Since this "loan" was in fact a purchase by Regal Bank of Regal Holdings shares it was inappropriate to reflect this purported increase as mark / market income.
- 79.5 During or about April 2001 Levenstein instructed de Castro to recognise as mark / market income R1 million in respect of Sempres. Since income was not reasonably certain at that stage it was inappropriate to recognise any income in respect of Sempres and in fact Levenstein subsequently indicated that the Sempres investment had been written down to R1.
- 79.6 During or about March 2001 Levenstein instructed de Castro inter alia to credit consulting fees and debit debtors' suspense as "the direct costs for the purchase of Worldwide shares will be recovered in cash". He also instructed de Castro to credit legal expenses with R210 286 and to debit goodwill/restraints with R153 286 and Grayston fixed asset account with R57 000. In addition he instructed de Castro to credit travel and accommodation and debit debtors suspense with R100 000

on the basis that this would be recovered from the sale of Worldwide shares to Hanover Re. There is no substance to the above transactions.

79.7 At a certain stage Regal Bank's records reflected a debit balance arising from Regal Banks sale of its RMI shares to RMI Investment Consortium. Levenstein instructed Davis to transfer the R6 million debit to the Pekane account. There was no basis for the transfer of the R6 million debit to the Phekani account. The transfer of the R6 million debit to the Phekani account constituted an invalid entry.

**[X] Fraudulent or reckless trading**

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80.1 Directors and/or officers of Regal Holdings and / or Regal Bank from to time<sup>38</sup> ("the directors and officers") are guilty of a contravention of s 424 (3) read with s 424 (1) of the Companies Act.

80.2 During or about the period February 1998 to 26 June 2001 the business of Regal Bank and Regal Holdings was carried on recklessly and the directors and officers were knowingly parties to the reckless carrying on of the business of Regal Bank and Regal Holdings.

80.3 The businesses of Regal Bank and Regal Holdings was carried on recklessly inter alia in one or more of the respects set out in this report in Part One paragraph 7.

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<sup>38</sup> Read with Part One paragraph 1.1