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## MARKET NOTICE

Johannesburg  
Stock Exchange

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**Number:** 392/2016

**Relates to:**  Equity Market  
 Equity Derivatives  
 Commodity Derivatives  
 Interest Rate and Currency Derivatives

**Date:** 19 July 2016

**SUBJECT:** NOAH CAPITAL MARKETS (PTY) LTD, MR. MICHAEL KAVANAGH AND MR. SHAHEEN ESSOP - ENFORCEMENT ACTION BY THE JSE

**Name and Surname:** Shaun Davies

**Designation:** Director : Market Regulation

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1. The JSE has issued disciplinary charges in terms of its Equities Rules against Noah Capital Markets (Pty) Ltd (“Noah Capital Markets”), a member of the Equities Market of the JSE, Mr. Michael Kavanagh, the Chief Executive Officer and acting Compliance Officer of Noah Capital Markets, and Mr. Shaheen Essop, an Executive Director and the Stockbroker in Control of Noah Capital Markets.
  2. The transgressions which resulted in the charges occurred on 26 November 2014, 21 & 22 January 2015 and 11 March 2015, and involved accepting orders and executing trades for one or more non-controlled clients which attracted a counterparty risk requirement which was in excess of the firm’s available regulatory capital at that time.
  3. Rules 3.30.3.1 and 3.30.3.2 require members, on admittance and at all times, to maintain adequate financial resources to meet their business commitments and to hold adjusted liquid capital which complies with the minimum requirements as calculated in terms of Directive DC, sufficient to meet their base and risk requirements. Rules 4.70.4 and 4.70.4.4 state that a member’s risk management procedures must be designed to ensure that the member’s records are maintained in such a manner as to promptly disclose financial and business information that will enable the member or the management of the member to ensure compliance with the capital adequacy requirements imposed in terms of the rules. Directive DC 9.14.1.2.2 imposes a counterparty risk requirement on unsettled and uncommitted trades executed by a member on behalf of non-controlled clients and members are required to hold sufficient capital resources to meet this risk requirement.
  4. The JSE charged Noah Capital Markets with contraventions of the JSE’s capital adequacy and risk management requirements as contained in JSE Equity Rules 3.30.3.1, 3.30.3.2, 4.70.4, 4.70.4.4 and Directive DC 9.14.1.2.2. In

terms of Rule 12.40.3.2 the Director: Surveillance made provision for an admission of guilt and Noah Capital Markets has admitted guilt on all of these charges.

5. As a consequence of the charges and the admission of guilt, the JSE has imposed a fine of R700 000 on Noah Capital Markets.
6. When considering the appropriateness of the fine imposed on Noah Capital Markets in relation to this matter, the JSE took into account a number of factors which included:-
  - a. the amount of brokerage earned by the firm as a direct consequence of these breaches;
  - b. the financial impact of the fine on the firm, taking into account its financial resources;
  - c. the extent to which the breaches were accidental or deliberate and / or reckless;
  - d. the full and unfettered co-operation of the firm, and its disciplinary record; and
  - e. the importance placed by the JSE on the capital adequacy requirements and the need to ensure that all members are aware of the importance thereof and the consequences of a breach of these requirements.
7. Rules 4.30.1 and 4.30.2 impose important fiduciary duties on the Compliance Officer of a member to assist the Board of Directors in ensuring compliance by the member with the provisions of the Act, the rules and the directives, as well as the obligation to implement the necessary systems and procedures to monitor compliance by the member and its employees with the provisions of the Act, the rules and the directives.
8. In terms of Rule 12.30.3, improper conduct shall include, but not be limited to, failing to comply with one or more provisions of the Act, the rules and directives, whilst Rule 12.30.4 states that improper conduct shall include negligently or recklessly conducting the affairs of the member in such a manner that actual or potential prejudice is or may be caused to the JSE, any other member, a client or a member of the general public, or failure to introduce controls to avoid such prejudice.
9. The JSE charged Mr. Kavanagh with misconduct in terms of JSE Equity rules 12.30.3 and 12.30.4 in that as a result of his failure to carry out the fiduciary duties imposed on him by virtue of his position as both the Chief Executive Officer and the Compliance Officer, Noah Capital Markets breached Rules 3.30.3.1, 3.30.3.2, 4.70.4 and 4.70.4.4 and Directive DC 9.14.1.2.2, and Mr. Kavanagh further breached Rules 4.30.1 and 4.30.2. In terms of Rule 12.40.3.2, the Director: Surveillance made provision for an admission of guilt and Mr. Kavanagh has admitted guilt on all of these charges.
10. As a consequence of the charges and the admission of guilt, the JSE has imposed a fine of R140 000 on Mr. Kavanagh.
11. Rule 4.60 states, in peremptory terms, that the business of Noah Capital Markets must be under the control of a Stockbroker who is also an Executive Director of the member.
12. The JSE charged Mr. Essop with misconduct in terms of JSE Equity rules 12.30.3 and 12.30.4 in that as a result of his failure to carry out the fiduciary duties imposed on him by virtue of his position as both an executive director and the Stockbroker in Control, Noah Capital Markets breached Rules 3.30.3.1, 3.30.3.2, 4.70.4 and 4.70.4.4 and

Directive DC 9.14.1.2.2, and Mr. Essop further breached Rule 4.60. In terms of Rule 12.40.3.2, the Director: Surveillance made provision for an admission of guilt and Mr. Essop has admitted guilt on all of these charges.

13. As a consequence of the charges and the admission of guilt, the JSE has imposed a fine of R140 000 on Mr. Essop.
14. In determining the appropriateness and quantum of the fines imposed on Mr. Kavanagh and Mr. Essop, the JSE took into account the following factors:-
  - a. the fact that they, as officers and Executive Directors of Noah Capital Markets, had both failed to fulfil important fiduciary duties imposed on them in terms of the rules;
  - b. on the morning of 22 January 2015, before the opening of the market, despite having both been aware of the firm's existing regulatory capital shortfall, both Mr. Kavanagh and Mr. Essop failed to take and impose the necessary executive decisions to prevent trades on behalf of non-controlled clients from being executed once the market had opened and before the firm had sufficient regulatory capital in place to accommodate the risk requirement commensurate with such trades;
  - c. the importance placed by the JSE on the Capital Adequacy requirements and the need to ensure that all members and their officers are aware of the importance thereof and the consequences of a breach of these requirements; and
  - d. the full and unfettered co-operation of Mr. Kavanagh and Mr. Essop, and their previous clean disciplinary records.
15. According to the JSE's records and to the best of the JSE's knowledge, Noah Capital Markets has maintained adequate financial resources and has complied with the JSE's Capital Adequacy requirements since the date of the last breach on 11 March 2015.

Should you have any questions in relation to this Market Notice please contact Richard Bone at +27-11-5207150 or [richardbone@jse.co.za](mailto:richardbone@jse.co.za).